(20,837.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 434.

INTERNATIONAL TEXTBOOK COMPANY, PLAINTIFF IN ERROR,

vs.

AARON T. PIGG.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 29, 1907.

1 Be it remembered, that on the 6th. day of September A. D. 1906 there was filed in the office of the clerk of the supreme court of the state of Kansas a petition in error and case-made attached thereto, together with a waiver of the issuance and service of summons in error and the entry of appearance of the defendant in error, which petition in error, case-made and waiver are in words and figures as follows, to-wit:—

2 *Copy.*

15151.

In the Supreme Court of the State of Kansas.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

Petition in Error.

Comes now the plaintiff in error by W. H. Cowles, its attorney, and shows unto the Court that it is a corporation duly organized and existing under the laws of the State of Pennsylvania; that on July 27, 1906, said defendant in error, A. T. Pigg, by consideration of the district court of Shawnee County, Kansas, obtained a judgment affirming a judgment of the Court of Topeka, and obtained also a judgment against this plaintiff in error for costs, all of which appears from a Case-Made attached to this petition in error, marked Exhibit A, and made a part hereof; that there is error in said judgment and proceedings, as appears from said Case-Made in that,—

1. Said District Court erred in affirming the judgment of the Court of Topeka, whereas he should have reversed the same and proceeded to render the judgment which the Court of Topeka should have rendered, awarding this plaintiff in error judgment as prayed for in the Court of Topeka, as required by the agreed statement of facts therein filed.

2. Said District Court erred in holding this plaintiff in error not entitled to sue, because the statutes of Kansas set up in abatement of the action are wholly void and inoperative, being in conflict with the constitution and statutes of the United States.

3. Said District Court erred in rendering judgment against this plaintiff in error for costs.

4. Said District Court erred in overruling the motion of this plaintiff in error for a new trial.

3 Wherefore this plaintiff in error prays that this Court set aside said erroneous judgment of the district court, and send to it a mandate directing the proper judgment to be rendered by it

on the facts agreed to by the parties; and that this plaintiff in error have such other and further relief as may be proper in the premises.

W. H. COWLES,
Attorney for Plaintiff in Error.

4 In the District Court of Shawnee County, Kansas.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

Case-Made.

Be it remembered that on May 7, 1906, the above-named plaintiff in error filed in the district court of Shawnee County, Kansas, its petition in error from the Court of Topeka, which, was in Terms as follows:

EXHIBIT A.

5 In the District Court of Shawnee County, Kansas.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

Petition in Error.

Comes now the plaintiff in error above-named, by W. H. Cowles, its attorney, and shows unto the Court:—

That on April 21, 1906, the Court of Topeka, in an action then pending before it in which this plaintiff in error was plaintiff and said defendant in error was defendant, found that this plaintiff in error, by its failure to comply with the statutes of this State regulating corporations, was barred from maintaining said action, and thereupon rendered judgment against this plaintiff in error and in favor of said defendant in error for the costs of said action; and that on April 26, 1906, said court made an order overruling a motion of this plaintiff in error for a new trial of said action. A transcript of the record and proceedings in said action is hereto attached, marked Exhibit A, and made a part hereof.

That there is error in said record and proceedings in that said court erred in so rendering judgment and in so refusing a new trial of said action, for the reason that it appeared from the evidence that the corporation statutes referred to had no application in said action because this plaintiff in error was not doing business within the State of Kansas within the meaning of said statutes; and it further appeared that if said statutes are so construed as to apply to the acts performed by this plaintiff in error, and to prevent the maintenance of said action, said statutes are in conflict with the constitution of the

United States and the amendments thereof, and with statutes enacted under authority thereof, and are hence wholly inoperative and void so far as they relate to said action—all of which appears from the transcript hereto attached and above referred to.

Wherefore this plaintiff in error prays this Court to vacate said order and judgment of the Court of Topeka, and to render in favor of this plaintiff in error the judgment said trial court should have rendered; and for such other and further relief as may be proper.

W. H. COWLES,
Attorney for Plaintiff in Error.

6 EXHIBIT A (TO PETITION IN D. C.).

Transcript. Civil Action.

No. 4296.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff,
vs.
A. T. PIGG, Defendant.

Filed this — day of ——, 1—.

——— ———,
Clerk of the District Court.

STATE OF KANSAS, *Shawnee County, ss:*

I, the undersigned, Clerk of the Court of Topeka, in said County, hereby certify that the within is a full, true, complete and perfect copy of the proceedings in the above action, had by and before me, at my office in said Township, as the same appears of record on my Docket 15, page 206, together with the Bill of Exceptions.

Witness my hand, at Topeka, in said County, this 4th day of May, 1906.

E. L. O'NEIL, *Clerk.*

Entered according to Act of Congress, in the year 1873, by Geo. W. Crane and Hugh M. Spalding, in the office of the Librarian of Congress, at Washington.

6¼ STATE OF KANSAS, *Shawnee County, ss:*

Entered according to Act of Congress, in the year 1873, by Geo. W. Crane and Hugh M. Spalding, in the office of the Librarian of Congress, at Washington.

In the Court of Topeka, of the City of Topeka, in said County.

No. 4296.

THE INTERNATIONAL TEXTBOOK COMPANY, Plaintiff,
vs.
A. T. PIGG, Defendant.

Civil Action. Amount Claimed, $79.60.

March 31, 1906, the Plaintiff filed its bill of particulars, $5 bond and asking for Judgment in the sum of Seventy nine and $\frac{60}{100}$ Dollars balance due on contract, and for costs of this action.

Summons issued, and dated March 31, 1906, returnable April 7, 1906, at 8 o'clock A. M.

—— issued to —— —— and dated —— —, 1—, and returnable —— —, at — o'clock — M.

Subpœna issued on behalf of the Plaintiff, and dated —— —, 1—.

Subpœna issued on behalf of the defendant, and dated —— —, 1—.

Summons returned and filed March 31, 1906, at 4 o'clock P. M., with the following return indorsed thereon, to wit: March 31, 1906, Received this Writ. Served the same March 31, 1906, by delivering a copy thereof, duly certified, with the indorsements thereon, to A.T. Pigg, the within named defendant.

J. T. WINTRODE, *Marshal.*
J. K. LAMBERSON, *Deputy.*

Laws 1899.

Court Fees for Issuing Writs, Process and Orders, and Incidents Thereto.

	Fees for actual and necessary services rendered in this case.
— Summons.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....	40
— Summons for Order of Attachment.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....	
— Summons for Order to Garnishee.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....	
—Summons for Forcible Entry, etc.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....	
— Summons in Replevin.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40.....	
— Summons for Jury.—Issuing, 15c.; entering order, 15c.; entering by whom demanded, 10c.; names of jurors selected and time appointed for trial, 10c.; names of jurors appearing and sworn, 10c.; swearing jury to answer questions, 5c.; swearing jury to try case, 5c.; filing, 5c. Total, 75c.....	

— Garnishment—Order to Pay Money into Court.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....
— Garnishment—Order of Discharge.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....
— Order of Arrest.—Issuing, 25c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 50c.....
— Order of Attachment.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....
— Subpœna for Plaintiff.—Issuing, 25c.; filing, 5c. Total, 30c..... 30
— Subpœna for Defendant.—Issuing, 25c.; filing, 5c. Total, 30c..... 30

Docket Entries, etc., of Process and Proceedings.

(Docket entries, 10c. each for first 20 entries and 5c. each thereafter. Filing papers, 5c. each for first 10 and 3c. each thereafter.)

— Index, title, and number of action—each, 10c. Total, 30c..... 30
— Filing—Bills of Particulars.—Entering, 10c.; filing, 5c. Total, 15c..... 30
— Affidavit for Arrest of Defendant.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Affidavit for Attachment.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Affidavit in Garnishment.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Affidavit in Forcible Entry, etc.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35.....
— Affidavit in Replevin.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Affidavit for Change of Place of Trial.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Affidavit for Continuance.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c.....
— Other Affidavits.—Oath, 5c.; certificate or jurat, 15c.; entering, 10c.; filing, 5c. Total, 35c..... 60
— Appearance of Parties.—Entering, 10c..... 20
— Appearance of Attorney.—Entering, 10c..... 20
— Witnesses sworn, each, 5c.....
— Entering names of plaintiff's witnesses examined in the docket, 10c.....
— Entering names of defendant's witnesses examined in the docket, 10c.....
— Swearing — witnesses to their claims, each, 5c.....
— Exceptions to rulings of justice on questions of law, each, 10c..... 10

— Verdict of jury, and when received, 10c.....
— Finding of justice, each, 10c..... 10
— Money paid to justice, and by whom, each, 10c..... 10
— Other Docket Entries.—Entering, each, 10c..... 20
— Order of Dismissal.—Entering same, each, 15c.....
— Order of Adjournment.—Entering same, each, 15c.....
— Order of Continuance.—Entering same, each, 15c..... 30
— Other Orders.—Entering, each, 15c.....
— Judgment.—Rendering, 25c.; entering, 10c. Total, 35c. 70
— Judgment, satisfaction of, each, 25c..... 25
— Judgment, transfer of, each, 15c..... 15
— Transmitting papers, 25c.; entering date of transmission, 10c. Total, 35c..... 35
— Giving transcript — folios (5c. per folio) — c.; certifiate thereto, 15c. Total, — c..... 50
— Giving Abstract.—1 folio, 5c.; certificate thereto, 15c.; date, 10c. Total, 30c.....
— Undertakings or Bonds.—Entering, 10c.; approving, 15c.; affidavit of sureties indorsed or attached, 20c.; filing, 5c. Total, 50c.....
Bill of exceptions..... 15
Agreed statement of facts..... 15
— Trial by jury or court, each day or part thereof, 50c..... 50
— Examination of garnishee, — c. a folio; oath, 5c.; certificate, 15c.; entering, 10c.; filing, 5c. Total, 40c.....
— Execution.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....
— Order of Sale.—Issuing, 15c.; entering date, 10c.; return, 10c.; filing, 5c. Total, 40c.....

Marshal's Fees for Serving and Executing Writs, Process, and Orders.

25c. where the process contains the name of but one person; 15c. for each additional person. Mileage, 10c. per mile. Four per cent. on all money collected on execution.

6.15
2.30
2.25

10.70

6½ Copies of summons or notices left at the place of abode, 15c. each.—G. S. 1889, § 3037.

— Summons for parties..... 60
— Summons for, or order, or notice to garnishee .....
— Summons in forcible entry, etc.....
— Summons in replevin.....
— Summoning a jury.....
— Order of arrest.....
— Order of attachment .....

— Order to reseize property in attachment.....
— Order to discharge.....
— Order to restore property taken in attachment or execution.....
— Order to pay in.....
— Order of commitment .....
— Order to bring prisoner into court .....
— Subpœna for plaintiff 1 10
— Subpœna for defendant..... 60
— Notice.....
— Execution .....
— Order of sale.....
— Appraisal and return, 50c.....
— Undertakings or Bonds.—Taking and returning, each, 25c. Total.....
— Attending on jury, 50.....

For keeping property taken in replevin or attachment, or cattle or live stock taken in execution, a reasonable compensation, etc.—G. S. 1889, § 3037; *id.*, § 5000.

— Allowance by court .....

Total. ..... $

Witness Fees.

	D.	M.	$	Cts.
J. B. Hughes	1	.....	.....	75
Josiah Jordan	1	.....	.....	75
W. W. Wyley	1	.....	.....	75

Jurors' Fees.

Received our fees—the sums set opposite our respective names.

April 7, 1906, 8 o'clock, A. M.—By consent this case is continued until April 17, 1906, at 8 o'clock, A. M.

April 17, 1906, 8 o'clock, A. M.—Comes now the plaintiff, the International Textbook Company, by its attorney, W. H. Cowles, and also comes the defendant, A. T. Pigg, in person and by his attorney, T. D. Humphrey; whereupon this cause is submitted to the Court upon an agreed statement of facts in the case and upon which the Court may pronounce judgment herein. After argument of counsel this case is by consent of parties taken under advisement for decision until April 21, 1906, at 9 o'clock, A. M.

April 21, 1906, 9 o'clock A. M.—Comes the parties hereto as before, and the hour for decision herein having arrived and being fully advised in the premises, the Court upon the pleadings and evidence submitted finds as follows, to-wit: First, That said plaintiff is a foreign corporation. Second, That it has failed to comply with the statutes of this State in such cases made and provided. And third, That it is now, and has been, doing business in this State.

Wherefore it is by the Court considered, ordered and adjudged that the said defendant, A. T. Pigg, do have and recover of and from the said plaintiff, The International Textbook Company, his costs herein laid out and expended, taxed at $—; and hereof let execution issue.

ARTHUR J. McCABE, *Judge.*
EDWIN L. O'NEIL, *Clerk.*

April 21, 1906.—Comes the plaintiff, The International Textbook Company, by its attorney, W. H. Cowles, and files its motion for a new trial herein.

April 26, 1906, at 2 o'clock, P. M.—Come now the parties hereto as before; and thereupon after argument of counsel and being fully advised in the premises, said motion for a new trial is by the Court overruled, and the plaintiff thereupon duly excepts.

EDWIN L. O'NEIL, *Clerk.*

April 28, 1906.—Comes now the plaintiff, The International Textbook Company, by its attorney, W. H. Cowles, and files its bill of exceptions herein, and the same is this 30th day of April, 1906, A. D., by the Court duly allowed; a copy of which is hereto attached, marked Exhibit A.

A. J. McCABE, *Judge.*

7 EXHIBIT A (TO TRANSCRIPT FROM COURT OF TOPEKA).

In the Court of Topeka, in Shawnee County, Kansas.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff,
v.
A. T. PIGG, Defendant.

Bill of Exceptions.

Be it remembered that in the above-entitled action there were, in due time, filed pleadings as follows, omitting captions and titles:

Bill of Particulars.

Comes now the plaintiff, by W. H. Cowles, its attorney, and for its cause of action against said defendant, says:

That it is, and at all times hereinafter referred to was, a corporation duly organized and existing under the laws of the State of Pennsylvania.

That about Oct. 12, 1905, said defendant entered into a written agreement with this plaintiff in terms as follows, in substance:

Said defendant subscribes for a scholarship in the Commercial Law Course in the International Correspondence Schools, an educational establishment conducted by the plaintiff at Scranton, Pa.; instruction papers and questions to be furnished by plaintiff as studies proceed; scholarship, when paid for, to be non-forfeitable and transferable on payment of stipulated transfer fees; defendant to pay for said scholarship the sum of $84.60, payable $5. at the signing of the contract, and $5. a month thereafter till fully paid, but in case of default in the payment of any instalment all to become due at the option of this plaintiff; and with a further option to said defendant to pay out in full within sixty days at an aggregate of $72.

That this plaintiff has performed all conditions to be by it performed. But that said defendant has made no payments under said agreement except the first payment made at the signing thereof, and has defaulted on the payment due thereon on Nov. 12, and on all subsequent instalments. That there remains unpaid under the terms of said agreement the sum of $79.60, and this plaintiff has exercised its option that said entire sum become at once due and payable.

Wherefore this plaintiff prays judgment against said defendant for the sum of $79.60, with interest thereon from this date at the rate of 6% per annum, and for the costs of this action.

W. H. COWLES,
Attorney for Plaintiff.

Præcipe.

The Clerk will please issue a summons in action for the defendant, A. T. Pigg.

8

Answer.

And now comes the defendant, A. T. Pigg, by his attorney, T. D. Humphreys, and in answer to the bill of particulars of the plaintiff filed herein, says: That the plaintiff is a foreign corporation, organized under the laws of the State of Pennsylvania and existing by virtue of the said laws of the State of Pennsylvania. That it is a corporation organized for profit. That the said plaintiff maintains offices and branches in the State of Kansas for the purpose of transacting its business in the State of Kansas. That it maintains in the City of Topeka, and has ever since the year 1889 maintained a branch office. That these branch offices are maintained in the State of Kansas and business transacted in the State of Kansas in violation of Sec. 1283 of the General Statutes of 1901, and all amendments thereof. That the plaintiff corporation has at no time complied with the corporation laws of the State of Kansas, and has never received authority to do business in the State of Kansas. That the plaintiff has not obtained a certificate from the Secretary of State of the State of Kansas that the statements provided to be made in said Sec. 1283 before an action can be maintained, have not at any time been made. That such certificate not having been obtained plaintiff cannot maintain this action.

Wherefore defendant prays judgment against said plaintiff for his costs herein, and that he may go hence without day.

T. D. HUMPHREYS,
Att'y for Defendant.

STATE OF KANSAS, *Shawnee County, ss:*

A. T. Pigg, being first duly sworn, on his oath says that he has read the foregoing answer, and that the same is true.

A. T. PIGG.

Subscribed and sworn to before me this 5 day of April, 1906.
[SEAL.] R. D. BLAINE, *N. P.*

My com. expires Dec. 15, 1909.

Reply.

Comes now the plaintiff by W. H. Cowles, its attorney, and for its reply, by way of answer, to the plea in abatement set out in the defendant's answer heretofore filed herein, says:

That this plaintiff admits that it is a corporation organized and existing under the laws of the State of Pennsylvania, and that it has never received authority from the charter Board of the State of Kansas to do business in this State.

And each and all the other material allegations in said defendant's answer this plaintiff denies.

W. H. COWLES,
Attorney for Plaintiff.

And the foregoing were the only pleadings filed in the action.

9 And be it further remembered that thereafter in due time, on April 13, 1906, the parties hereto duly filed in said action their agreed Statement of Facts in terms as follows, omitting caption and title:

Agreed Statement of Facts.

The parties hereto submit this action to the Court for decision upon an Agreed Statement of Facts, as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania, and is the proprietor of the International Correspondence Schools, located at Scranton, Pa.

2. That on Oct. 10th, 1905, the defendant executed in Topeka, Kansas, an agreement in writing, a copy of which is hereto attached, marked Exhibit A, and made a part hereof. That on or about the 16th day of October, 1905, said agreement was received by the plaintiff in Scranton, Pa., and was by it there approved and accepted; that the plaintiff thereupon delivered to the defendant the scholarship in the International Correspondence Schools referred to in said agreement, and has duly performed all conditions thus far to be performed under the terms of said agreement and scholarship. A blank form of the certificate of scholarship is hereto attached, marked Exhibit B.

3. That unless the plaintiff is debarred from maintaining this action by reason of its failure to comply with the statutes of Kansas, as hereafter appears from this statement of facts, the plaintiff is entitled to judgment as prayed for in the bill of particulars.

4. The plaintiff is a corporation having a capital stock, and the profits, if any, from the operation of the corporation, belong to the corporation to be distributed in dividends or otherwise applied as it may elect.

5. All the executive officers of the plaintiff corporation reside, and exercise their functions as such executive officers, at Scranton, Pa., and not in Kansas.

6. The business of the plaintiff is preparing and publishing instruction papers, textbooks, and illustrative ap*a*paratus for the same, for courses of study suited for teaching by correspondence through the mails, and forwarding such publications and apparatus to students and instructing them through the mail, from Scranton, Pa., in the manner set forth in Exhibit A.

7. All the teachers and instructors of the plaintiff corporation reside and perform their duties at Scranton, Pa., and none of them reside in the State of Kansas.

8. The plaintiff in carrying out these operations employs local or traveling agents, whose title is Solicitor-Collector, and whose duties are to procure and forward to the plaintiff at Scranton, Pa., from persons in a specified territory, on blanks furnished by the plaintiff, similar in substance to the printed portion of Exhibit A, hereto attached, applications for scholarship in the International Correspondence Schools, and to collect and forward deferred
10 payments on scholarships issued by the plaintiff. That the Solicitor-Collector is kept informed by the plaintiff of the various fees to be collected for the various scholarships offered and

the contract charges to be made for cash or deferred payments, and the terms of payment acceptable to the plaintiff, in order that applicants may, so far as practicable, adapt their applications to their needs.

The scholarship, instruction papers, textbooks, and illustrative apparatus called for under each application accepted, are sent by the plaintiff from Scranton, Pa., directly to the applicant; and instruction is imparted by means of correspondence by mail between the applicant, from his residence, and the plaintiff at Scranton, Pa.

Moneys paid by the applicants on account of scholarships are received in the first instance by the Solicitor-Collector of the district where the applicant resides, and by him forwarded to the plaintiff. That the receipt given for such money, with stub, and voucher to be sent the plaintiff, is on a form furnished by the plaintiff, a copy of which is hereto attached, marked Exhibit C, and made a part hereof.

9. One J. B. Hughes is Solicitor-Collector for plaintiff for a territory including Topeka, Kansas, and is soliciting students to take correspondence courses in plaintiff's schools. He has his office in Room 1, Real Estate Building, on Jackson Street in the City of Topeka, and has in the window of said office a sign, supplied by plaintiff, which reads, "Local Agency International Correspondence Schools, Scranton, Pa." In his office are bound volumes, samples of some of the volumes that are sent out by plaintiff as pertaining to particular courses. Said office is paid for by said Hughes, and is maintained by him for the purpose of furthering the procuring of applications for *for* scholarships for plaintiff and the collection of fees therefor, as above set forth; and the plaintiff has no office in the State of Kansas for the purpose of doing any business other than that herein stated.

That said Hughes is paid a fixed salary by plaintiff and also a commission on the number of applications obtained and the volume of collections made.

Numerous persons in the City of Topeka are now, and were at the time this suit was filed, and at the time the contract herein sued on was accepted, taking from plaintiff courses of instruction by correspondence. Contracts for said courses were procured, and payments thereon were and are being collected and remitted by plaintiff's solicitor-collector, in the manner above set forth.

Said Hughes makes to the plaintiff a "daily report" for his territory on blanks furnished by the plaintiff; and such reports show for the month of March, 1906, aggregate collections on scholarships and deferred payments on scholarships approaching $500.

10. The plaintiff has never filed with the Secretary of State of the State of Kansas its consent to be sued by the service of summons upon said Secretary; or any application for authority to do business in the State of Kansas; or any annual reports; and it has no certificate from the Secretary of the Charter Board or from the Secretary of State, as to such matters.

W. H. COWLES,
Att'y for Pl'ff.
T. D. HUMPHREYS,
Att'y for Def't.

DO NOT SIGN THIS CONTRACT WITHOUT READING IT

It is subject to acceptance by the Company at Scranton, Pa., and Agents are not authorized to change its conditions

10

BK 126250

	C.		I.	
G	80		G 94	
D	8		D 9	40
N	72		N 84	60

the

International Textbook Company

Proprietors of the

INTERNATIONAL CORRESPONDENCE SCHOOLS

SCRANTON, PA.

I hereby subscribe for a Scholarship in the International Correspondence Schools, covering a Course of Correspondence Instruction in

Commercial Law

IT IS AGREED as follows:

FIRST: That the price hereinafter agreed to be paid for said Scholarship shall include

(a) All charge for INSTRUCTION IN ALL SUBJECTS OF THE COURSE for which said Scholarship calls until I am qualified to receive a Diploma or Certificate of Proficiency, provided I complete said Course within five years from the date hereof.

(b) All postage on Instruction Papers, Examination Questions, Drawing Plates, and corrected work sent to me by the Schools, unless I reside without, or remove beyond, the limits of the United States, Canada, or Mexico, in either of which cases I agree to pay such extra amount for postage as may be just, and I agree to pay the postage on matter sent to the Schools.

(c) A complete set of the Instruction Papers and Examination Questions, in pamphlet form, and Drawing Plates, used in teaching, which are to be supplied to me, in parts, as I proceed with my studies.

SECOND: That when said Scholarship is paid for in full it shall be non-forfeitable, and I shall have the right time I desire to stop studying, to transfer it to some other person upon payment of a transfer charge of $5.00 h subject in which I shall have received instruction, provided that such transfer charge shall in no case be less 5.00, and provided that when the average price per subject contained in the Scholarship (as found by dividing ce of the Scholarship by the number of subjects included therein) is greater than $5.00, then the transfer charge bject in which I shall have received instruction shall be such average price.

THIRD: That I will not permit any person who is not a holder of the same Scholarship to study from any ghted Instruction Papers, Examination Questions, Keys, and Drawing Plates, that may be furnished me under holarship.

FOURTH: That you have the right to keep one of the first and one of the last Drawing Plates made by me. ot be required to refund any part of the money paid for said Scholarship.

I promise to pay for said Scholarship the sum of

Ninety four Dollars ($ 94.)

Less 10% 34.60

following manner, viz.: Five Dollars ($ 5.00)

time of signing this Contract, and Five Dollars ($ 5.00)

AND EVERY MONTH HEREAFTER UNTIL SAID PRICE IS PAID IN FULL.

ivilege to cash out in 60 days @ 72.

In case default be made in the payment of any of said instalments, or any part thereof, when due and payable y agree that the whole amount remaining unpaid shall thereupon, at your option, become due and payable.

IT IS UNDERSTOOD that upon receipt of the full price of said Scholarship, or upon receipt of such lesser as your rules stipulate must be paid on said Scholarship before Bound Volumes or Outfit will be furnished, l loan to me such Bound Volumes of Instruction Papers, Examination Questions, Drawing Plates, and Keys, it belonging to said Scholarship as per statement on page 2 of this Contract (carrier's charges to be paid by r my use so long as I shall comply with the terms of this Contract. In consideration whereof, if I fail to with the terms of this Contract, I agree, upon your demand, to return to you said Bound Volumes or Outfit, expense and in good condition; provided, however, that after I have paid the full price above mentioned, I ot be responsible in case said Bound Volumes or Outfit are lost, destroyed, or damaged in any way. It is ood and agreed that the return of said Bound Volumes or Outfit shall in no way release me from the obli- to pay for said Scholarship.

ure A. F. Briggs [SEAL]

Address to which Mail is to be Sent

and No. 407 Kan. Ave. Oct. 12, 1905

Office Topeka

y Shawnee State Kan.

Hotel Rock 39

Must be signed in full by subscriber

PAGE CUT OFF

STATEMENT OF BOUND VOLUMES AND OUTFITS LOANED WITH SCHOLARSHIPS

A SET OF BOUND VOLUMES, which shall consist, as nearly as possible, of a complete set of the copyrighted Instruction Papers and Examination Questions, Drawing Plates, and Keys, used in the Course of Instruction with which it is furnished, conveniently arranged for reference, all fully indexed and bound in half-leather, valued at $5.00 per volume, is loaned with each Course after which the letter X is printed in the list below. No Bound Volumes are loaned with Courses not appearing in the list below.

A DRAWING OUTFIT, valued at $13.55, is loaned with the Courses marked ■ in the list below.

A CHART-WORK OUTFIT, valued at $13.55, is loaned with the Courses marked ● in the list below.

A PHONOGRAPH OUTFIT, valued at $30.00, is loaned with the Courses marked ⊕ in the list below.

A SHOW-CARD WRITERS' OUTFIT, valued at $13.55, is loaned with the Courses marked ✣ in the list below.

A complete set of **"MITCHELL'S MODELS AND EASY LESSONS IN LOCOMOTIVE RUNNING,"** six in number, consisting of Engineer's Brake Valve; Air-Signaling System; Feed-Valve Attachment; Slide-Valve Feed-Valve Attachment; Single and Duplex Pump Governors; Quick-Action Triple with Freight Brake, Cleaning Brake Equipment, and Brake Leverage, is loaned with Courses marked ▲ in the list below.

A set of **"MITCHELL'S MODELS AND EASY LESSONS IN LOCOMOTIVE RUNNING,"** two in number, consisting of Air-Signaling System; and Quick-Action Triple with Freight Brake, Cleaning Brake Equipment, and Brake Leverage, is loaned with Course marked ★ in the list below.

NAMES OF COURSES	Volumes Loaned with Courses
Complete Architectural	X
Architectural Drawing and Designing	X
Building Contractors'	X
Structural Engineering	X
Complete Commercial	X
Complete Stenographic	X
Bookkeeping and Business Forms	X
X Commercial Law	X
Complete Advertising	X
Window Dressing	X
● Window Dres'g, Show-Card Writ'g, and Adv'g.	X
● Window Dressing and Show-Card Writing	X
Window Dressing and Advertising	X
● Show-Card Writing and Advertising	X
General Chemistry	X
Chemistry and Chemical Technology	X
Chem. and Manuf. of Sulphuric Acid	X
Chem. and Mfr. Alka. and Hydro. Acid	X
Chemistry and Manuf. of Iron and Steel	X
Chemistry and Packing-House Industries	X
Chem. and Mfr. of Cottons'd Oil and Prod'ts	X
Chemistry and Manufacture of Leather	X
Chemistry and Manufacture of Soap	X
Chemistry and Manufacture of Cement	X
Chemistry and Manufacture of Paper	X
Chemistry and Manufacture of Sugar	X
Chemistry, Petroleum, and Mfr. of Prod.	X
Chemistry and Manufacture of Gas	X
■ Complete Lettering and Sign Painting	X
■ Sheet-Metal Pattern Drafting	X
■ Mechanical Drawing without Mathematics	X
■ Mechanical Drawing with Mathematics	X
■ Draftsmen's Course	X
● Boilermakers'	X
■ Drawing for Monument Workers	X
● Advanced Show-Card Writing	X
Complete Electrical Engineering	X
Electrical Engineering, Part 1	X
Electrical Engineering, Part 2	X
Telephone Engineering	X
Telegraph Engineering	X
Electric Lighting	X
Electric Car Running	X
Electric Lighting and Railways	X
Dynamo Running	X
Interior Wiring	X
Electric Railways	X
Advanced Electric Lighting	X
Advanced Electric Railways	X
■ Architectural Drawing	X
■ Perspective Drawing	X
■ General Illustrating	X
■ Newspaper Illustrating	X
■ Architectural Rendering	X
■ Carpet Design	X
■ Wallpaper Design	X
■ Linoleum Design	X
■ Bookcover Design	X
■ General Design	X
Civil Engineering	X
Railroad Engineering	X
Surveying and Mapping	X
Bridge Engineering	X
Municipal Engineering	X
Hydraulic Engineering	X
Marine Engineers'	X
Steam-Electric	X
Complete Steam Engineering	X
Engine and Dynamo Running	X
Engine Running	X
Advanced Engine Running	X

NAMES OF COURSES	Volumes Loaned with Courses
Stationary Firemen's	X
Teachers'	X
Methods of Teaching	X
Complete Electrotherapeutic	X
Nurses' Electrical	X
Gynecological Electrotherapeutic	X
Surgical Electrotherapeutic	X
Neurological Electrotherapeutic	X
Eye, Ear, Nose, and Throat Electro.	X
Roentgen Rays	X
Dental Electrotherapeutic	X
Genito-Urinary Electrotherapeutic	X
● Ocean Navigation	X
● Lake and Coast Navigation	X
⊕ Spanish	X
⊕ German	X
⊕ French	X
⊕ English-French	X
Mechanical Engineering	X
Mechanical	X
Shop Practice (5 Divisions)	X
Shop Practice (4 Divisions)	X
Shop Practice (3 Divisions)	X
Shop Practice (2 Divisions)	X
Machine Shop	X
Toolmaking	X
Patternmaking	X
Foundry Work	X
Blacksmithing and Forging	X
Farm Machinery	X
Gas Engines	X
Refrigeration	X
Full Mining	X
Complete Coal Mining	X
Metal Mining	X
Short Coal Mining	X
Metal Prospectors'	X
Complete Metallurgy	X
Milling	X
Smelting	X
Hydrometallurgy	X
Sanitary Plumb., Heating, and Ventilation	X
Sanitary Plumbing and Gas-Fitting	X
Sanitary Plumbing	X
Gas-Fitting	X
Heating and Ventilation	X
Complete Cotton	X
Cotton Carding and Spinning	X
Cotton Warp Prep. and Plain Weaving	X
Fancy Cotton Weaving	X
Cotton Card., Spin., and Plain Weaving	X
Complete Textile Designing	X
Theory of Textile Designing	X
Cotton Designing	X
Yarn, Reeling, Warping, and Winding	X
Woolen and Worsted Designing	X
Complete Woolen	X
Woolen Carding and Spinning	X
Woolen Warp Preparation and Weaving	X
Worsted Warp Preparation and Weaving	X
Woolen Carding, Spinning, and Weaving	X
▲ Locomotive Running, Complete	X
Locomotive Running, Division 3	X
▲ Air Brake, Complete	X
Air Brake, Division 1	X
★ Trainmen and Carmen's	X
Trainmen and Carmen's, Division 1	X
Roundhouse, Division 1	X
Roundhouse, Division 2	X
† Roundhouse, Division 3	X

A student who is not of age and who enrolls on the instalment plan must have the following guarantee signed by parent, guardian, or other responsible party, otherwise the Contract will not be accepted.

I Hereby Guarantee *the payment of the price of the Scholarship taken.*

Signature of Guarantor _____

Address _____

TAKE NOTICE

In taking enrolments in any of those Courses with which Outfits are furnished according to statement on page 2 of this Contract, but where the persons to be enrolled already have the necessary outfit, or who wish to enroll without the Outfit, the Representative will write in the blank line left for the name of the Scholarship on page 1 of this Contract as follows: "Mechanical Drawing, without Drawing Outfit, etc.," as the case may be.

STUDENTS NEED NOT PASS AN EXAMINATION TO ENROLL

On the contrary, to begin studying, all they are required to know is HOW TO READ AND WRITE. Many of the students that enroll, however, have some knowledge of mathematics before they begin with us; and in order that we may not require such students to do work that they understand, they are requested to answer the following questions:

1. *Do you wish to start your Course with the regular Papers?* Yes.

2. *Do you wish to take an examination in Arithmetic with a view to omitting the work on the regular Papers?* ← X

3. *If you wish examinations in some of the other elementary subjects with a view to omitting the regular Papers, mention subjects.* ——

4. *If your Course includes Drawing, do you desire to take up Drawing at once with the other Papers?* ——

SPECIAL RAILROAD EMPLOYES' CERTIFICATE

We enroll locomotive engineers and firemen, ONLY, in the Locomotive Running Courses. Any one desiring to enroll in a Locomotive Running Course must have this certificate filled out and signed by one of the following officials of the railroad company by whom he is employed: Superintendent of Motive Power, Master Mechanic, or Roundhouse Foreman.

I certify that the student who has signed the accompanying Contract for Scholarship is employed on the _____

R. R. in the capacity of _____

(Signed) _____ *Official Position* _____

Student is employed on _____ *R. R.*

Division, Shop, or Yard employed in _____

Name of Superior Officer _____

The official certifying as above incurs no liability whatever in respect to payments on the Scholarship.

ORDER OF WORK

In the Complete Locomotive Running Course, and the Locomotive Running Course, Division 3, the student may begin either with the Papers on the Air Brake or with those on Locomotive Boilers. The Representative MUST indicate by an X in one of the spaces below the Student's choice.

Air Brake: ☐ **Locomotive Boilers:** ☐

Students enrolling in one Division only of the Shop Practice Course will please mark the figure "1" opposite the Division they wish to study. Students that enroll in more than one Division will please indicate by the figures "1," "2," "3," etc., the order in which they wish to study the Divisions. Those enrolling for the Toolmaking Division should either have a thorough knowledge of Machine Shop Practice or first take our instruction in that subject.

PAGE CUT OFF

REPRESENTATIVES WILL FILL IN EACH BLANK IN FULL. WRITE PLAINLY

Place an X Opposite Source of Enrolment	
Students' Reference	X
Home-Office Reference	
Special Canvasser	
Private Mailing Card	
Window Display	

No Commission Due will be issued on this enrolment unless C. L. and No., or No., and mail address, as well as name of student to be credited, are written below. Date of first payment may be substituted for C. L. and No., or No., when latter has not been issued by the Home Office. If student is a keyed box holder, write his key number in the space provided for it.

Name A. W. Rodgers, Blk 820195 (C. L. & No., or No.)

St. and No. 503 Monroe

Town Topeka, *State* Kansas.

Key No. *Route No.* 61 *File No.* 1456

Name of Student A. T. Riggs

Street and Number Savoy Hotel

Post Office Topeka *County* Shawnee *State* Kansas

Name of Employer Himself

Street and Number

City and State Topeka, Kansas.

In enrolling students in the marine service, Representatives will fill out the following additional blanks:

Name of Boat

Name of Ship Owner

Port of Registry X

Master

WHERE BOUND VOLUMES OR OUTFIT ARE TO BE DELIVERED

Street and Number Hotel Savoy

City Topeka, *County* Shawnee *State* Kansas.

WHEN AND WHERE COLLECTIONS ARE TO BE MADE

Date on which monthly payments will be made 16 of mo.

Street and Number Hotel Savoy

City Topeka *State* Kansas.

I Hereby Certify that all conditions and agreements made are in this Contract, and that the signature, address, occupation, and age, as subscribed to the first page hereof, were written by the student personally in my presence.

Signature of Representative Roy D. Marsh

Title of Representative Rep.

Name of Representative Roy D. Marsh

Name of Division Superintendent J. L. Kuehnau

Dist. Chgo *Div. No.* 32 *Route No.* 61 *File No.* 1467

TO BE FILLED IN AT THE HOME OR DISTRICT OFFICE ONLY

First Work 422 Lawrence Gen.

423 " L. & P. R.

Received Enrolled

17

_____ 190__ No. 32599 C

Name _____

C. L. and No. _____ Record No. _____ Div. _____ Route _____

$ _____ 11

_____ 190__ No. 32599 C

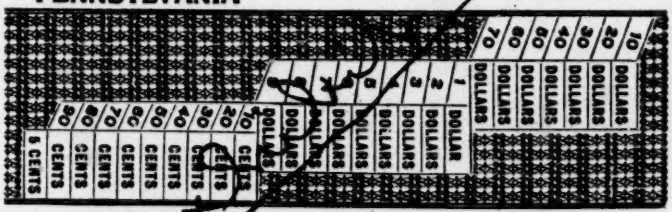
Received from _____

C. L. and No. _____ Record No. _____ Div. _____ Route _____

Am't previously paid. $ _____

_____ Representative

PENNSYLVANIA



CAUTION THIS RECEIPT IS NOT GOOD AFTER IT IS CUT OUT, UNLESS THE THE AMOUNT YOU PAY THE COLLECTOR. SUM OF THE HIGHEST MARGINAL AMOUNTS CORRESPONDS TO

SOLICITING DEPARTMENT

_____ 190__ **Received** from No. 32599 C

_____ DOLLARS, _____ CENTS,

Being the sum indicated by printed figures on margin hereof, according to notice above, on account of Scholarship No. [illegible] Course.

INTERNATIONAL TEXT-BOOK COMPANY, PROPRIETORS OF THE

Pennsylvania

International Correspondence Schools

THIS RECEIPT IS NOT GOOD UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE.

ALWAYS GET A PRINTED RECEIPT LIKE THIS.

_____ Treasurer

By _____ Representative

246N—16367-11-13-05-2m 17025 12

UT OFF

WE DO NOT SELL TUITION BY THE MONTH

But Scholarships for a stipulated sum, payments upon which must be made regularly and promptly each month until the full amount is paid. Our representatives are not allowed to make exceptions to this rule.

INCLUDING
THE SCHOOLS OF
ARCHITECTURE.
CHEMISTRY.
CIVIL ENGINEERING.
COMMERCE, DESIGN,
DRAWING.
ELECTRICAL ENGINEERING.
ELECTROTHERAPEUTICS.
ENGLISH BRANCHES,
FRENCH, GERMAN,
LETTERING.
LOCOMOTIVE RUNNING.
MATHEMATICS
AND MECHANICS.
MECHANICAL ENGINEERING.
MINES, NAVIGATION.
PEDAGOGY.
PLUMBING, HEATING
AND VENTILATION.
SHEET METAL WORK.
SPANISH.
STEAM AND MARINE
ENGINEERING.
STRUCTURAL ENGINEERING.
TELEGRAPHY AND
TELEPHONY.

CLASS LETTER AND NUMBER

INTERNATIONAL CORRESPONDENCE SCHOOLS

SCRANTON, PENNSYLVANIA.

This is to Certify, that Mr. _____

of _____ P. O. State of _____ has purchased one

SCHOLARSHIP

in the International Correspondence Schools, and is entitled to instruction in all the subjects embraced in said Scholarship, until qualified to receive a Diploma or Certificate of Proficiency, subject to the conditions contained in the Contract for this Scholarship.

Witness the Seal of the International Correspondence Schools, and the Signatures of the President and Secretary. Date _____ 190

Stanley P. Allen
Secretary.

T. J. Foster
President.

12

E1

No. 2

BLURRED PAGES

14 And be it further remembered that afterward, on April 17, 1906, this action was duly tried before the Court on the foregoing statement of facts, which constituted the only evidence received or offered; the Court then took the matter under consideration, and on April 21, 1906, rendered his decision and judgment in favor of the defendant for costs. On the same day the plaintiff duly filed his motion for a new trial, which was, omitting caption and title, in terms as follows:

Motion for a New Trial.

Comes now the plaintiff by W. H. Cowles, its attorney, and moves the Court to set aside the decision heretofore rendered herein, and grant a new trial of this action for the reasons,—

1. Error in the amount of recovery, the same being too small.
2. The decision is not sustained by sufficient evidence, and is contrary to law.

W. H. COWLES,
Att'y for Pl'ff.

And on April 26, 1906, the foregoing motion was duly argued by attorneys for both parties, and was by the Court overruled; to which ruling the plaintiff at the time excepted.

O. K.
T. D. HUMPHREYS,
Attorney for Defendant.

Allowance.

On this 30 day of April, 1906, the foregoing Bill of Exceptions is presented to me by the plaintiff, who asks that the same be allowed and made a part of the record of the case; and now on examination, I find the same to be a true and correct Bill of Exceptions, and hereby allow the same, and direct it to be filed as a part of the record.

A. J. McCABE,
Judge of the Court of Topeka.

(Here ends Exhibit A of the petition in error in the District Court.)

15 On the same day the petition in error was filed in the district court the defendant in error entered his appearance in the action, and waived the issuance and service of a summons therein.

On July 11, 1906, the action came duly on for trial, and was argued by counsel, and the Court took the same under advisement; and on July 27, 1906, the court duly rendered his decision and judgment, in terms as follows—omitting caption and title:

Journal Entry.

On this 27th day of July, 1906, the Court having had this action under advisement and being now fully advised in the premises, finds that at the time the International Textbook Company sued the defendant, A. T. Pigg, in the Court of Topeka, said Company was not entitled to maintain said action, and said court correctly awarded judgment in favor of said defendant for costs.

Wherefore it is now by the Court ordered and adjudged that the judgment of the Court of Topeka in this action be, and the same is hereby, affirmed; and the Clerk is hereby directed to certify this decision to the Court of Topeka. And it is further adjudged that the defendant in error, A. T. Pigg, have judgment against the plaintiff in error, the International Textbook Company, for his costs in this court, taxed at $——, wherefor let execution issue.

To which finding and judgment the plaintiff in error at the time excepts.

A. W. DANA, *Judge.*

At the same term, on July 30, 1906, the plaintiff in error filed its motion for a new trial on the ground that the decision and judgment of the Court is not sustained by sufficient evidence and is contrary to law.

On Aug. 6, 1906, an order of the Court was duly made and filed extending to Oct. 1, 1906, the time for making and serving a case-made for the Supreme Court in this action, and notice of such extension was duly served on the defendant in error.

On Sept. 4, 1906, said motion for a new trial came regularly on for hearing, and was by the Court overruled, to which ruling the plaintiff in error at the time duly excepted.

The foregoing Case-Made contains a true and correct copy of the petition in error in the district court, which was the only pleading in the case; a correct recital of the waiver of summons in error; a true copy of the journal entry of judgment, except the caption and title; and a correct recital of the motion for a new trial and the proceedings thereon, and of the extension of time for serving a case-made; and these copies and recitals constitute, in substance, the entire record and proceedings in the cause, and all that is necessary to a review of the correctness of the judgment and of the ruling on the motion for a new trial.

16 Service of the foregoing Case-Made is hereby acknowledged this 4th day of September, 1906.

T. D. HUMPHREYS,
Attorney for Defendant in Error, A. T. Pigg.

In the District Court of Shawnee County, Kansas.

No. 23850.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

Settlement of Case-Made.

I, the undersigned, judge of the District Court of Shawnee County, Kansas, hereby certify that the foregoing was presented to me as a Case-made in the action above-entitled, both parties appearing by attorney, and no amendments being suggested.

And I further certify that said action is one in which rights claimed under the constitution and laws of the United States are asserted, and necessarily passed upon.

And I now settle and sign the foregoing as a true and correct Case-Made, and direct that it be attested and filed by the Clerk of said court.

Witness my hand at Topeka, in Shawnee County, Kansas, this 6th day of September, 1906.

A. W. DANA,
District Judge.

Attest:
I. S. CURTIS, *Clerk.*

Filed Sept. 6, 1906.

[SEAL.]

I. S. CURTIS,
Clerk District Court.

[Endorsed:] 15151 23850. International Textbook Company *v.* A. T. Pigg. Copy. Case-Made.

17 In the Supreme Court of the State of Kansas.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

Waiver of Summons.

Comes now A. T. Pigg, defendant in error in the action above named, by T. D. Humphreys, his attorney of record, and enters his voluntary appearance, hereby waiving the issuance and service of a summons in error herein.

T. D. HUMPHREYS,
Attorney of Record for A. T. Pigg,
Defendant in Error.

18 Be it further remembered, that afterward on the 6th day of June, A. D. 1907, the same being one of the regular judicial days of the January 1907 term of the supreme court of the state of Kansas, said court being in session at its court-room in the city of Topeka, the following proceeding among others was had and remains of record, to-wit:—

19 No. 15151.

THE INTERNATIONAL TEXT BOOK COMPANY, Plaintiff in Error,
vs.
A. T. PIGG, Defendant in Error.

Journal Entry of Submission.

This cause comes on to be heard on the petition in error and the transcript of the record of the district court of Shawnee County; thereupon after oral argument by W. H. Rossington for the plaintiff in error, and by T. D. Humphreys for the defendant in error, said cause is submitted on brief of counsel for both parties and taken under advisement by the court.

20 Be it further remembered, that afterward on the 5th day of July, A. D. 1907, the same being one of the regular judicial days of the July 1907 term of the supreme court of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding was had and remains of record, in words and figures as follows, to-wit:—

21 No. 15151.

THE INTERNATIONAL TEXT BOOK COMPANY, Plaintiff in Error,
vs.
A. T. PIGG, Defendant in Error.

Journal Entry of Judgment.

This cause comes on for decision and thereupon it is ordered and adjudged that the judgment of the court below be *affirmed*. It is further ordered that the plaintiff in error pay the costs of this case in this court taxed at $—— and hereof let execution issue.

22 Be it further remembered, that also on the 5th day of July, A. D. 1907, there was filed in the office of the clerk of the supreme court of the state of Kansas, the syllabus and opinion of said court in said cause, which syllabus and opinion are in words and figures as follows, to-wit:—

23 No. 15151.

INTERNATIONAL TEXTBOOK COMPANY
v.
A. T. PIGG.

Error from Shawnee County. Affirmed.

Syllabus by the Court—Smith, J.

Under the agreed facts in this case the plaintiff in error was a foreign corporation and was, at the time of the rendition of the judgment in the court below, "doing business in the state of Kansas" and was not entitled to maintain any action in the courts thereof by reason of its failure to comply with the corporation laws of the state.

All the justices concurring.

24 No. 15151.

INTERNATIONAL TEXTBOOK COMPANY
v.
A. T. PIGG.

Error from Shawnee County. Affirmed.

The opinion of the court was delivered by SMITH, J.:

The plaintiff in error brought this action in the Court of Topeka on a written contract, of date October 12th, 1905, and set forth as follows:—

"Said defendant subscribed for a scholarship in the Commercial Law course in the International Correspondence Schools, an educational establishment conducted by the plaintiff at Scranton, Pa.; instruction papers and questions to be furnished by plaintiff as studies proceed; scholarship, when paid for, to be non-forfeitable and transferable on payment of stipulated transfer fees; defendant to pay for said scholarship the sum of $84.60, payable $5. at the signing of the contract, and $5. a month thereafter till fully paid, but in case of default in the payment of any installment all to become due at the option of this plaintiff; and with a further option to said defendant to pay out in full within sixty days at an aggregate of $72."

The defendant answered, in abatement, that plaintiff was a foreign corporation, for profit, that it was transacting business in this state out of which business the contract arose and that it had not complied with the corporation laws of Kansas and was not entitled to maintain the action.

The reply denied that the plaintiff was doing business in the state of Kansas and admitted all other facts alleged in the bill of particulars.

At the trial the case was submitted upon the following agreed statements without other evidence, to-wit:—

"Agreed Statement of Facts."

"The parties hereto submit this action to the Court for decision upon an Agreed Statement of Facts, as follows:

25 1. The plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania, and is the proprietor of the International Correspondence Schools, located at Scranton, Pa.

2. That on Oct. 10th, 1905, the defendant executed in Topeka, Kansas, an agreement in writing, a copy of which is hereto attached, marked Exhibit A, and made a part hereof. That on or about the 16th day of October, 1905, said agreement was received by the plaintiff in Scranton, Pa., and was by it there approved and accepted; that the plaintiff thereupon delivered to the defendant the scholarship in the International Correspondence Schools referred to in said agreement, and has duly performed all conditions thus far to be performed under the terms of said agreement and scholarship. A blank form of the certificate of scholarship is hereto attached, marked Exhibit B.

3. That unless the plaintiff is debarred from maintaining this action by reason of its failure to comply with the statutes of Kansas, as hereafter appears from this statement of facts, the plaintiff is entitled to judgment as prayed for in the bill of particulars.

4. The plaintiff is a corporation having a capital stock, and the profits, if any, from the operation of the corporation, belong to the corporation to be distributed in dividends or otherwise applied as it may elect.

5. All the executive officers of the plaintiff corporation reside, and exercise their functions as such executive officers, at Scranton, Pa., and not in Kansas.

6. The business of the plaintiff is preparing and publishing instruction papers, textbooks, and illustrative apparatus for the same, for courses of study suited for teaching by correspondence through the mails, and forwarding such publications and apparatus to students and instructing them through the mail, from Scranton, Pa., in the manner set forth in Exhibit A.

7. All the teachers and instructors of the plaintiff corporation reside and perform their duties at Scranton, Pa., and none of them reside in the State of Kansas.

26 8. The plaintiff in carrying out these operations employs local or traveling agents, whose title is Solicitor-Collector, and whose duties are to procure and forward to the plaintiff at Scranton, Pa., from persons in a specified territory, on blanks furnished by the plaintiff, similar in substance to the printed portion of Exhibit A, hereto attached, applications for scholarships in the International Correspondence Schools, and to collect and forward deferred payments on scholarships issued by the plaintiff. That the Solicitor-Collector is kept informed by the plaintiff of the various fees to be collected for the various scholarships offered and the con-

tract charges to be made for cash or deferred payments, and the terms of payment acceptable to the plaintiff, in order that applicants may, as far as practicable, adapt their application to their needs.

The scholarship, instruction papers, textbooks, and illustrative apparatus called for under each application accepted, are sent by the plaintiff from Scranton, Pa., directly to the applicant; and instruction is imparted by means of correspondence by mail between the applicant, from his residence, and the plaintiff at Scranton, Pa.

Moneys paid by the applicants on account of scholarships are received in the first instance by the Solicitor-Collector of the district where the applicant resides, and by him forwarded to the plaintiff. That the receipt given for such money, with stub, and voucher to be sent the plaintiff, is on a form furnished by the plaintiff, a copy of which is hereto attached, marked Exhibit C, and made a part hereof.

9. One J. B. Hughes is Solicitor-Collector for plaintiff for a territory including Topeka, Kansas, and is soliciting students to take correspondence courses in plaintiff's schools. He has his office in Room 1, Real Estate Building, on Jackson Street in the City of Topeka, and has in the window of said office a sign, supplied by plaintiff, which reads, "Local Agency International Correspondence School, Scranton, Pa." In his office are bound volumes; samples of some of the volumes that are sent out by plaintiff as pertaining to particular courses. Said office is paid for by said Hughes,
27 and is maintained by him for the purpose of furthering the procuring of applications for scholarships for plaintiff and the collection of fees therefor, as above set forth; and the plaintiff has no office in the State of Kansas for the purpose of doing any business other than that herein stated.

That said Hughes is paid a fixed salary by the plaintiff and also a commission on the number of applications obtained and the volume of collections made.

Numerous persons in the City of Topeka are now, and were at the time this suit was filed, and at the time the contract herein sued on was accepted, taking from plaintiff courses of instruction by correspondence. Contracts for said courses were procured, and payments thereon were and are being collected and remitted by plaintiff's solicitor-collector, in the manner above set forth.

Said Hughes makes to the plaintiff a "daily report" for his territory on blanks furnished by the plaintiff; and such reports show for the month of March, 1906, aggregate collections on scholarships and deferred payments on scholarships approaching $500.

10. The plaintiff has never filed with the Secretary of State of the State of Kansas its consent to be sued by the service of summons upon said secretary; or any application for authority to do business in the State of Kansas; or any annual reports; and it has no certificate from the Secretary of the Charter Board or from the Secretary of State, as to such matters."

Thereupon the Court of Topeka rendered judgment in favor of the plaintiff for the amount claimed and the defendant appealed therefrom to the District Court of Shawnee County.

In the latter court the case was submitted upon the same pleadings and the same evidence and judgment was therein rendered in favor of the defendant. The plaintiff brings the case here.

As disclosed by the agreed statement of facts a principal part of the business of the plaintiff was selling scholarships in many
28 branches of learning and collecting the pay therefor. For this purpose it maintained an agency in Kansas and had, before the commencement of this action, done quite an extensive business with numerous customers and was evidently seeking and intending to pursue and extend this business. These scholarships entitled the owner thereof to certain books and instruction and when paid for were transferable. It is true that the books and instruction papers were prepared and forwarded to the owner of the scholarship from another state but the securing of the order therefor and a part payment in advance were done through an agent in this state. This agent was doing business in Kansas, not his own business as principal but the company's business as its agent. Hence the company was doing business in Kansas.

We are unable to distinguish this case in principle from Deere *v.* Wyland, 69 Kan. 255, and on the authority of that case and the authorities there cited the judgment is affirmed.

Johnston, C. J., Greene, Burch, Mason Graves, JJ., concurring.

PORTER, *J.*, dissenting:

The busines of plaintiff was not the disposal of scholarships but the teaching by correspondence of various branches of learning. The sale of the certificate entitled the purchaser thereof to receive instruction, and was a mere incident of the business.

When preliminary examinations of applicants for admission to an eastern university are conducted in Kansas, and certificates issued, the university is not transacting its principal business here, nor would the fact that it received from its agent here the matriculation fee and delivered its certificate here make the transaction a doing of business in the state within the statute requiring foreign corporations seeking to do business in the state to make application for permission to do so. The repetition of the transaction does not make it, in my opinion, any the less a mere incident of the principal business of the corporation.

29 In the Supreme Court of the State of Kansas.

No. 15151.

THE INTERNATIONAL TEXT-BOOK COMPANY, Plaintiff in Error,
v.
A. T. PIGG, Defendant in Error.

I, D. A. Valentine, Clerk of the supreme court of the state of Kansas, do hereby certify that the above and foregoing is a full, true, correct and complete transcript of the record and all the pleadings and papers filed and all proceedings had in the above entitled cause, as the same now remain on file and of record in my office.

Witness, my hand and the seal of the supreme court of the state of Kansas, hereto affixed at my office in Topeka this 6th day of August A. D. 1907.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

30 Here follows, the petition for the writ of error and assignments of error together with the prayer for reversal, and the order allowing the writ of error and fixing the appeal bond, a copy of the appeal bond, the original writ of error and the allowance thereof, and the citation together with the acknowledgement of service thereof.

31 In the Supreme Court of the State of Kansas.

No. 15151.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error,
vs.
A. T. PIGG, Defendant in Error.

Petition for Writ of Error and Assignment and Prayer.

Considering itself aggrieved by the final decision of the Supreme Court in the above-entitled case, affirming the judgment of the district court against it, this plaintiff in error hereby prays a writ of error from the said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of a bond for costs.

And said International Textbook Company, for the purpose of obtaining a review in the Supreme Court of the United States, assigns the following errors in the record and proceedings of said case:

The foreign corporation laws of the State of Kansas referred to in the answer of defendant Pigg in the trial court, being Secs. 1260 to 1268, inclusive, and Sec. 1283, of the General Statutes of Kansas, of 1901, require of corporations of other states the filing of a copy of their charter, the payment of a charter fee, the filing of consent to be sued by substitued service, the obtaining of authority to do business, and the filing of annual reports, as conditions precedent to the doing of business in Kansas or the maintaining of actions in Kansas courts. This Plaintiff in error is a corporation organized under the laws of the State of Pennsylvania, and the validity of said sections as applied to the operations of this plaintiff in error, was by it
32 denied and drawn in question on the ground of their being repugnant to the Constitution of the United States, and to the Civil Rights Act passed for the enforcement of the 14th Amendment thereof. The Supreme Court of the State of Kansas, on July 5, 1907, rendered a judgment against this plaintiff in error uphold-

ing the validity of said sections; and in such judgment said court erred, as appears from the accompanying transcript of the proceedings in said case, in holding:

1. That said sections are valid as applied to the operations of this plaintiff in error; and are—

2. Not in conflict with Sec. 8 of Art. I, of the Constitution of the United States, relating to the regulation of commerce among the several states.

3. Not in conflict with Sec. 1 of the 14th Amendment to the Constitution of the United States, forbidding any state to deny to any person the equal protection of the laws.

4. Not in conflict with Sec. 1977 of the Revised Statutes of the United States, relating to equal rights to resort to the courts for the enforcement of contracts, and equal benefit of all laws for the security of persons and property.

For which errors this plaintiff in error, International Textbook Company prays that the said judgment of the Supreme Court of the State of Kansas be reversed, and a judgment directed for this plaintiff in error; and that this plaintiff in error have judgment for costs, and all other proper relief.

DAVID C. HARRINGTON,
W. H. COWLES,
Attorneys for International Textbook Company.

STATE OF KANSAS, *Supreme Court, ss:*

Let the writ of error issue upon the filing by International Textbook Company of a bond for costs in the sum of $500., in favor of defendant in error, Aaron T. Pigg.

Dated August 6, 1907.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

33 Know all men by these presents, That we, International Textbook Company, as principal, and The Title Guaranty & Surety Co. as surety, are held and firmly bound unto Aaron T. Pigg, in the full and just sum of Five Hundred dollars, to be paid to the said Aaron T. Pigg, his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this — day of August, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a session of the Supreme Court of the State of Kansas, in a suit depending in said court, between International Textbook Company and said Aaron T. Pigg, a judgment was rendered against the said International Textbook Company, and the said International Textbook Company having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Aaron T. Pigg, citing and admonishing him to be and appear

at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said International Textbook Company shall prosecute its writ of error to effect, and answer all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

INTERNATIONAL TEXTBOOK COMPANY,
By W. H. COWLES, *Its Attorney.*
THE TITLE GUARANTY & SURETY COM.,
By GEO. F. GOROW,
EDWIN F. McKEEVER,
Its Att'y. [SEAL.]

E. G. ROUSSEAU.

Approved by—
W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Bond satisfactory.
T. D. HUMPHREYS,
Attorney for Pigg.

34 The original of the foregoing appeal bond was lodged with the clerk of the supreme court of the state of Kansas, on the 6th. day of August 1907 and the following indorsement made thereon, Approved and filed D. A. Valentine, Clerk of the supreme court.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between International Textbook Company and A. T. Pigg, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
36 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error

hath happened to the great damage of the said International Textbook Company, as by its complaint appears. We being willing that error, if any hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 6th day of August, in the year of our Lord one thousand nine hundred and seven.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States,
District of Kansas.

Allowed by
W. A. JOHNSTON,
Chief Justice of the Supreme Court of
the State of Kansas.

[Endorsed:] Writ of Error. Filed Aug. 6, 1907. D. A. Valentine, clerk Supreme Court.

37 The original writ of error was lodged with the clerk of the supreme court of the state of Kansas, on Aug. 6th, 1907 and also at the same time and place a copy thereof for the defendant in error A. T. Pigg, said copy being addressed personally to said defendant in error. The following indorsement was made upon said original writ and upon each copy. Writ of error, filed Aug. 6th 1907. D. A. Valentine, Clerk Supreme Court.

38 UNITED STATES OF AMERICA, *ss:*

To Aaron T. Pigg, sued as A. T. Pigg, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Kansas, wherein International Textbook Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Kansas, this 6 day of August, 1907.

[Seal Supreme Court, State of Kansas.]

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:
D. A. VALENTINE,
Clerk Supreme Court.

TOPEKA, KANSAS, *Aug.* 6, 1907.

I, attorney of record for the defendant in error in the case above referred to, hereby acknowledge due service of the above citation.

T. D. HUMPHREYS,
Attorney for Aaron T. Pigg.

39 UNITED STATES OF AMERICA, *Supreme Court of Kansas, ss:*

In Obedience to the commands of the within writ, I herewith transmit to the supreme court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court, in the city of Topeka, this 6th day of August 1907.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: File No. 20,837. Kansas supreme court. Term No. 434. International Textbook Company, plaintiff in error, *vs.* Aaron T. Pigg. Filed August 24th, 1907. File No. 20,837.

IN THE

United States Supreme Court

OCTOBER TERM, 1907

NO. 434

INTERNATIONAL TEXTBOOK COMPANY
Plaintiff in Error

vs.

AARON T. PIGG,
Defendant in Error

In Error to the Supreme Court of the State of Kansas.

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

The International Textbook Company is a corporation duly incorporated under the laws of the State of Pennsylvania, for the purpose of originating, writing, compiling, illustrating, editing, publishing, and selling Instruction Papers, textbooks, drawing plates, periodicals, magazines, pamphlets, articles, and letters for the dissemination of literary, technical, educational, and other information; to conduct a printing, engraving, lithographing, stereotyping, line work, half tone work, embossing, printing in black and colors, photographing, phototyping, photograving, picture printing, and a bookbinding business; and generally to transact a printing, bookbinding, and publishing business by the

various methods now in use, or which may hereafter be introduced or invented.

I. That it exercises all its corporate franchises in Scranton, Pa., and is engaged in giving instruction by correspondence through the mail, as stated in the Printed Record of this case, page 11, sections 1 and 6.

II. That the Plaintiff appoints Representatives in Kansas and other States in the Union to solicit persons to take Courses of Instruction. Printed Record, page 11. The application for such Courses is set forth fully in the Printed Record, page 13.

III. That said applications are forwarded to Scranton for acceptance, and when accepted the applicant is notified, and Instruction Papers, Lesson Papers, and Books are sent to the student from Scranton. Printed Record, page 12.

IV. That he studies and sends his lessons to Scranton for correction, where they are corrected and returned to him, and if he desires special instruction in any subject, the same is written and sent to him by mail; all the instruction being in writing, typewriting, or printing, and transmitted through the mail from Scranton. Printed Record, page 12.

V. That the payments made upon said contracts are remitted by the Representative collecting the same, direct to the Company, and are not deposited in a bank in Kansas. Printed Record, page 12.

VI. That the corporation Plaintiff has not complied with the laws of the State of Kansas,

for this reason: it claims that what it is doing is Interstate Commerce. Printed Record, page 12.

VII. That the Defendant in this case signed an application for a Course of Instruction, and seeks to avoid liability on the contract by setting up as a defense that the Plaintiff is engaged in business in Kansas, and is a Foreign Corporation, and has not complied with the laws of Kansas relative to such Corporations; that the Court below sustained the contention of the Defendant, and entered a judgment in his favor; from which an appeal has been taken to this Honorable Court. Printed Record, page 11, Par. 3, and Page 12, Par. 10.

VIII. That the International Textbook Company is proprietor of the International Correspondence Schools, through which it gives instruction, and since it has been in business, it has enrolled over one million and forty-four thousand students, many of whom reside in the State of Kansas, and many thousands in every State of the Union. That if the contention of the Plaintiff is not sustained, it will subject it to great costs and damages, and interfere with its giving instruction by correspondence through the mail, and will prevent its making collections, not only from students residing in Kansas, but from those residing in other States of the Union, and subject the Company to great expense, and costs, to comply with the laws of Kansas and of other States relating to Foreign Corporations.

The Plaintiff's contention, and ground for such contention is: First: Printing was invented by Guttenberg in 1444. Prior to that books only existed in writing. That a book

may consist of a single page or a single sheet has been decided at various times in copyright cases. In Clementi v. Golden, 2 Campbell, 25: held, one sheet was a book.

Clayton v. Stone, 2 Paine (U. S.), 382: held that a book may be printed on only one sheet, as the words of a song or the music accompanying it.

Church v. Lintin, (Ch.) 25 Ontario (Canada), Rep. 131, Applicant's blank to be answered by pupils entering a school is a book.

Drury v. Ewing, 1 Bond 54c, a chart printed on one large sheet to hang upon the wall, is a book.

From these decisions, and early history it is very plainly and clearly established:

First: That one sheet of paper, printed or written, may be a book.

Second: That the transmission of letters, through the mail, whether they be printed, written with ink, or typewritten, is publishing.

Third: That the International Textbook Company is a corporation duly incorporated under the laws of the State of Pennsylvania, having its principal office in the City of Scranton in the State of Pennsylvania.

Fourth: That the Company exercises all of its corporate franchises and conducts its business from the City of Scranton.

Fifth: That the selling of its books by agents employed for that purpose, is commerce.

Sixth: That the selling of Courses of Instruction by means of agents, seeing the parties

desiring the same, and obtaining from them a contract for which, in consideration of the amount they pay, the Company (if the contract is accepted at Scranton), agrees to sell to the party, a set of printed books in pamphlet form, and give instruction by written letters sent through the mail, is commerce.

Seventh: That the furnishing of instruction by correspondence by the transmission through the mails of written and printed instruction of lessons of students, is commerce.

Eighth: That the Constitution of the United States provides, *inter alia*, that Congress alone shall have the power to "regulate commerce with foreign nations and among the different states, and with the Indian Tribes."

Ninth: That the International Textbook Company is not "transacting business" or "doing business" in any other state of the United States within the meaning of the statutes of the different states and is not subject to them.

Tenth: That if the Statute of Kansas was intended, and by its term does apply to the business of the International Textbook Company, such statute is unconstitutional and void, and within the direct prohibition of the Constitution of the United States.

It is, therefore, desirable on the part of the Corporation Plaintiff, that it should have an early hearing in this case, in order that the same may have consideration, and if the Corporation Plaintiff is right in its contention, then that its business shall not be interfered

with and that it will have the right to maintain this and other suits; as the same question is raised not only in Kansas but in suits pending in other States of the Union.

This Honorable Court is, therefore, respectfully asked to advance this case upon the list, and name a date for its hearing as early as the Court can arrange for it.

All of which is respectfully submitted.

DAVID C. HARRINGTON,

Of Counsel and Attorney for Plaintiff in Error

26545-11-4-07-50

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No. 434

IN THE

SUPREME COURT of the UNITED STATES

ON WRIT OF ERROR TO THE
SUPREME COURT OF THE STATE OF KANSAS

INTERNATIONAL TEXTBOOK COMPANY — *Plaintiff in Error*

Against

AARON T. PIGG — *Defendant in Error*

BRIEF FOR PLAINTIFF IN ERROR

DAVID C. HARRINGTON,
Of Counsel for Plaintiff in Error

Supreme Court of the United States

October Term, 1907

No. 434

INTERNATIONAL TEXTBOOK COMPANY,
Plaintiff in Error,

vs.

AARON T. PIGG,
Defendant in Error.

Writ of error to the Supreme Court of the State of Kansas

BRIEF FOR PLAINTIFF IN ERROR

This writ of error brings up for review a judgment of the Supreme Court of the State of Kansas, the highest in which a decision could be had in this case.

Writ of Error, Printed Record, p. 31.

STATEMENT OF FACTS

The plaintiff is a Pennsylvania corporation engaged in the printing and publishing business, and in the giving of instruction by correspondence through the mails. It brought suit against the defendant in this case in the Court at Topeka, Kansas. The defense was set up that the plaintiff was a Foreign Corporation, and not having complied with the laws of the State of Kansas could not maintain the action.

There is an agreed statement of facts as stated commencing on p. 11 of the Printed Record.

Agreed Statement, Paragraph I, p. 11.

The plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania, and is the proprietor of the International Correspondence Schools, located at Scranton, Pa.

Agreed Statement of Facts, Paragraph II, p. 11.

On Oct. 10th, 1905, the defendant executed, in Topeka, Kansas, an agreement in writing, a copy of which is hereto attached, marked "Exhibit A," and made a part hereof. That on or about the 16th day of October, 1905, said agreement was received by the plaintiff in Scranton, Pa., and was by it there approved and accepted; that the plaintiff thereupon delivered to the defendant the scholarship in the International Correspondence Schools referred to in said agreement, and has duly performed all conditions thus far to be performed under the terms of said agreement and scholarship. A blank form of the certificate of scholarship is hereto attached, marked "Exhibit B." See Printed Record, p. 17.

Agreed Statement of Facts, Paragraph III, p. 11.

Unless the plaintiff is debarred from maintaining this action by reason of its failure to comply with the statutes of Kansas, as hereafter appears from this statement of facts, the plaintiff is entitled to judgment as prayed for in the bill of particulars.

Agreed Statement of Facts, Paragraph IV, p. 11.

The plaintiff is a corporation having a capital stock, and the profits, if any, from the operation of the corporation, belong to the corporation to be distributed in dividends, or otherwise applied as it may elect.

Agreed Statement of Facts, Paragraph V, p. 11.

All the executive officers of the plaintiff corporation reside, and exercise their functions as such executive officers, at Scranton, Pa., and not in Kansas.

Agreed Statement of Facts, Paragraph VI, p. 11.

The business of the plaintiff is preparing and publishing instruction papers, textbooks, and illustrative apparatus for the same, for courses of study suited for teaching by correspondence through the mails, and forwarding such publications and apparatus to students and instructing them through the mail, from Scranton, Pa., in the manner set forth in "Exhibit A." See Printed Record, p. 13.

Agreed Statement of Facts, Paragraph VII, p. 11.

All the teachers and instructors of the plaintiff corporation reside and perform their duties at Scranton, Pa., and none of them reside in the State of Kansas.

Agreed Statement of Facts, Paragraph VIII, p. 11.

The plaintiff in carrying out these operations employs local or traveling agents, whose title is "solicitor-collector," and whose duties are to procure and forward to the plaintiff at Scranton, Pa., from persons in a specified territory, on blanks furnished by the plaintiff, similar in substance to the printed portion of Exhibit A, hereto attached, applications for scholarships in the International Correspondence Schools, and to collect and forward deferred payments on scholarships issued by the plaintiff. The solicitor-collector is kept informed by the plaintiff of the various fees to be collected for the various scholarships offered and the contract charges to be made for cash or deferred payments, and the terms of payment acceptable to the plaintiff, in order that applicants may, so far as practicable, adapt their applications to their needs.

The scholarships, instruction papers, textbooks, and illustrative apparatus, called for under each application accepted, are sent by the plaintiff from Scranton, Pa., directly to the applicant; and instruction is imparted by means of correspondence by mail between the applicant, from his residence, and the plaintiff at Scranton, Pa.

Moneys paid by the applicants on account of scholarships are received in the first instance by the solicitor-collector of the district where the applicant resides, and by him forwarded to the plaintiff. The receipt given for such money, with stub, and voucher to be sent the plaintiff, is on a form furnished by the plaintiff, a copy of which is hereto attached, marked "Exhibit C," and made a part hereof.

For Exhibit A see Printed Record, p. 13.
For Exhibit C see Printed Record, p. 19.
Agreed Statement of Facts, Paragraph IX, p. 11.

One J. B. Hughes is solicitor-collector for plaintiff for a territory including Topeka, Kansas, and is soliciting students to take correspondence courses in plaintiff's schools. He has his office in Room 1, Real Estate Building, on Jackson Street, in the City of Topeka, and has in the window of said office a sign, supplied by plaintiff, which reads, "Local Agency International Correspondence Schools, Scranton, Pa." In his office are bound volumes, samples of some of the bound volumes that are sent out by plaintiff as pertaining to particular courses. Said office is paid for by said Hughes, and is maintained by him for the purpose of furthering the procuring of applications for scholarships for plaintiff and the collection of fees therefor, as above set forth; and the plaintiff has no office in the State of Kansas for the purpose of doing any business other than that herein stated.

Said Hughes is paid a fixed salary by plaintiff, and also a commission on the number of applications obtained and the volume of collections made.

Numerous persons in the City of Topeka are now, and were at the time this suit was filed, and at the time the contract herein sued on was accepted, taking from plaintiff courses of instruction by correspondence. Contracts for said courses were procured, and payments thereon were and are being collected and remitted by plaintiff's solicitor-collector, in the manner above set forth.

Said Hughes makes to the plaintiff a "daily report" for his territory, on blanks furnished by the plaintiff; and such reports show for the month of March, 1906, aggregate collections on scholarships and deferred payments on scholarships approaching five hundred dollars.

Agreed Statement of Facts, Paragraph X, p. 11.

The plaintiff has never filed with the Secretary of State of the State of Kansas its consent to be sued by the service of summons upon said Secretary; or any application for authority to do business in the State of Kansas; or any annual reports; and it has no certificate from the Secretary of the Charter Board or from the Secretary of State, as to such matters.

The District Court of Shawnee County, Kansas, rendered its decision, and a judgment in favor of the defendant for costs.

(Judgment, Record, p. 21).

From this an appeal was taken to the Supreme Court, and on the 5th day of July, A.D. 1907, the Judges of the Supreme Court of the State of Kansas entered a judgment, affirming the judgment of the Court below. Printed Record, p. 25, an opinion is rendered by Smith, J., of the Supreme Court, see opinion commencing on p. 25 of the Printed Record and ending on p. 28, Printed Record, in which other Judges

concurred, and to which Porter, J., dissented. Printed Record, p. 28.

ASSIGNMENT OF ERRORS

The plaintiff in error alleges error in the judgment here under review as follows:

I

The Court erred in finding that the Corporaation plaintiff was bound by the laws of the State of Kansas in Sections 1260 to 1268 inclusive, and Section 1283 of the General Statutes of Kansas of 1901 which required corporations of other States to file a copy of their charter, make payment of charter fee, the filing of consent to be sued by substituted service, the obtaining of authority to do business, and the filing of annual reports as conditions precedent to the doing of business in Kansas, or the maintaining of actions in Kansas Courts.

III

Error in holding that the Corporation plaintiff was doing business such as to bring it within the purview of the meaning of the said statute of Kansas as referred to in assignment of error number I.

III

Error in holding that Sections 1260 and 1268, inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 8, Article 1, of the Constitution of the United States, relating to the regulation of commerce among the several States.

IV

Error in holding that Sections 1260 and 1268 inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 1 of the 14th Amendment to the Constitution of the

United States, forbidding any State to deny to any person the equal protection of the laws.

V

Error in holding that Sections 1260 and 1258, inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 1977 of the Revised Statutes of the United States relating to equal rights to resort to the Courts for the enforcement of contracts, and equal benefits of all laws for the security of persons and property.

VI

Error in not entering judgment for the Corporation plaintiff for the amount as provided and stipulated in the agreed statements of facts.

ARGUMENT

I

The right of a Foreign Corporation to maintain an action in the Kansas Court without first having complied with its Statute. This question is presented by the first assignment of error.

I

The Case Stated

The following extracts are taken from the Kansas Statutes, a portion of the section of the chapter on Corporations of the General Statutes of 1901, which it is claimed controls and sustains the judgment of the Court below.

Sec. 1260. Foreign corporations seeking to "do business" in this State shall make application to the Charter Board for permission "to engage in business as a foreign corporation in this State."

Sec. 1261. Each application shall be accompanied by an application fee of $25, "and as a

condition precedent to obtaining authority to transact business in this State, said corporation shall file its written consent, irrevocable, to be sued by service of process on the Secretary of State." Every foreign corporation now "doing business" in this State shall file such consent within thirty days.

Sec. 1264. All such corporations seeking to "do business" in this State shall pay a charter fee of from $10 up to thousands of dollars, and pay a filing fee.

Sec. 1283. Each corporation for profit "doing business" in this State shall file an annual report with the Secretary of State. "No action shall be maintained or recovery had in any of the courts of this State by any corporation doing business in this State without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made."

The words in Section 1260 "Doing Business" or "Engaged in Business" appear in similar statutes in other States. It has been judicially decided what these words mean, and how they are to be construed.

Bertha Zinc & Mineral Co. v. *Clure.* 7 Misc. Rep. (N. Y. 23).

Washington Mills Co. v. *Roberts.* 8 App. Div. Rep. (N. Y. 201).

People ex rel. Southern Cotton Oil Co. v. *Roberts.* 25 App. Div. Rep. (N. Y. 13).

People ex rel. Soda Fount Co. v. *Roberts.* 20 App. Div. Rep. (N. Y. 585).

People ex rel. Kellogg Newspaper Co. v. *Roberts.* 30 App. Div. Rep. (N. Y. 150).

Ware Cattle Co. v. *Anderson et al.* 77 N. W. Rep. 1026.

Holder v. *Aultman,* 169 U. S. p. 81.

Sullivan v. *Sullivan Timber Co.,* 15 Southern Rep. 941.

Toledo Commercial Co. v. *Glen Mfg. Co.* 45 N. E. Rep. 197.

Mearshon & Co. v. *Lumber Co.* 187 P. S. 12.

Wolff-Dryer Co. v. *Bigler & Co.* 192 P. S. 466.

Cooper Manufacturing Co. v. *Ferguson*, 113 U. S. 727.

David & Rankin Building & Mfg. Co. v. *Dix et al*, 64 Fed. Rep. 406-412.

People ex rel. Brewing Co. v. *Roberts*, 22 App. Rep. (N. Y. 282).

People ex rel. Smith Co. v. *Roberts*, 27 App. Div. Rep. (N. Y. 455).

Beard v. *Publishing Co.* 71 Ala. 60.

Murphy Varnish Co. v. *Connell et al.* 10 Misc. Rep. 553.

People ex rel. The Harlan & Hollingsworth Co. v. *Campbell*, 139 (N. Y. 68).

The People of the State of New York ex rel. The Chicago Junction Railways and Union Stockyards Company. v. *Jas. A. Roberts*, 154 (N. Y. 1).

Havens & Geddes Company v. *Diamond.* 93 Ill. App. 557.

In all these cases it is clearly stated that a corporation incorporated to do a manufacturing business, and that exercises all its corporate franchises in the State where it is incorporated and manufactures the article which it sells in the State where it is incorporated, although it sends agents to other States to sell its goods, does not engage in business in the other States. It can only be stated "Doing Business" in other States when it opens its manufacturing establishment and manufactures its goods in another State.

B

Effect of judicial construction of statutes when subsequently reenacted in same words in same State, and other States which may enact a similar statute with similar words. It is a familiar rule of law that if a statute is judicially construed and afterwards reenacted, there is incorporated in it, the opinion and construction given by the Court. The same rule applies in

cases where a statute has been passed in one State and received the judicial construction of the Court in that State. If after such construction it is adopted in another State, the construction is incorporated in the statute. A large number of authorities may be found in Vol. 23, 2d. edition American and English Enc. of Law, p. 371, etc., and p. 432, etc. I will only refer to a few of the many authorities on this subject:

Abbottsford. 98 U. S. 440.
United States. v. *Mooney.* 116 U. S. 104.
Reiche. v. *Smythe.* 13 Wall. p. 162.
Dwarris on Statutes. pp. 701-766.
McDonald. v. *Hovey.* 110 U. S. 619.

In all these cases it is held that the second statute must be read by the light of the first, and that the Legislature is supposed to know the use of the words and the meaning attached to them as construed by the Court. In fact there is no other way to construe the statute.

The following is a brief reference to the statutes of the different States with the dates of their enactment, and to the words used in them. To give the construction as claimed by the Supreme Court of Kansas, to the words "Doing Business" would make them mean one thing in one State, and another thing in another State, a thing not to be thought of for a moment, or sustained.

California, Act of 1872, "Doing Business."
Connecticut, Act of 1895, "Transacting Business."
Colorado, Act of 1900, "Carrying on Business."
Delaware, Act of 1899, "Doing Business."
Iowa, Act prior to 1898, "Transacting and Carrying on Business."
Kentucky, Act prior to 1892, "Transacting or Soliciting or Doing Business."
Massachusetts, Act of 1884, "Doing Business."
Maryland, Act of 1898, "Doing Business."
Michigan, Act of 1895, "Carrying on Business."

Minnesota, Act of 1899, "Doing Business."
Missouri, Act of 1891, "Doing Business."
Montana, Act of 1899, "Doing Business."
Nebraska, Act of 1897, "Doing Business."
New Jersey, Act of 1875, "Doing Business."
New York, Act of 1892, "Doing Business."
Nevada, Act of 1899, "Carrying on Business."
Pennsylvania, Act of 1874, "Doing Business."
Rhode Island, Act of 1900, "Doing Business."
South Dakota, Act of 1895, "Transacting Business."
Tennessee, Act of 1877, "Doing Business."
Texas, Revised Statutes 1895, "Transact Business."
Utah, Act of 1898, "Doing Business."
Washington, Act of 1898, "Transacting Business."
West Virginia, Code of 1868 to 1891, "Transacting Business" and "Doing Business."

The law is well settled that the words in the English language are always to have the same meaning, so that a person making contracts or using the language will know what is meant, and when the facts are ascertained, the meaning of the words to be applied to them cannot be changed.

C

The question, therefore, presented to the Court is, was the plaintiff "doing business" in Kansas within the meaning of the statute referred to.

The purpose for which the Corporation plaintiff is incorporated reads as follows:

"Said corporation is formed to originate, write, compile, illustrate, edit, publish and sell Instruction Papers, textbooks, drawing plates, periodicals, magazines, pamphlets, articles and letters for the dissemination of literary, technical, educational, and other information; to conduct a printing, engraving, lithographing, stereotyping, electrotyping, line-work, half-tone work,

embossing, printing in black and colors, photographing, phototyping, photograving, picture printing, and a bookbinding business; and generally to transact a printing, bookbinding, and publishing business by the various methods now in use, or which may be hereafter introduced or invented," and as stated in the agreed statement of facts, it is organized, and exists, under the laws of the State of Pennsylvania, and is located at Scranton, Pa. See Record, p. 11. It exercises all its corporate franchises in Scranton, Pennsylvania, and not in Kansas; that no contracts are made until they are accepted by the Company in Scranton; that the books are sent through the mails from Scranton, and the giving of instruction is done through the mails from Scranton; that the plaintiff employs agents in Kansas to solicit persons to take Courses of Instruction, and purchase these books; said applications (see Record, p. 13) are sent to Scranton for acceptance or rejection, and when accepted the books are furnished. In all the cases decided, and referred to above, it is clearly and distinctly shown that the Company is "doing business" in Scranton only, independent of Commerce that arises in this case, which will be discussed later. It is true, as stated in the agreed statement of facts, Printed Record, p. 12, that the Representative who solicits for the plaintiff, has an office which he rents in Kansas and which he pays the rent for himself, has books in some of its Courses as samples, and for use to aid him in procuring applications for Scholarship, but the plaintiff has no office in Kansas, and does not keep its books there for sale, that all books sold are delivered from its Home Office in Scranton by mail, or are sent to the student in Kansas by express. It is, therefore, clear that the Company is not "doing business" in Kansas within the meaning of the statute. That the contract in this case is a Pennsylvania contract, is equally

clear, as stated in Volume 9, "CYC," p. 670: "a contract is, as a rule, considered as entered into at the place where the acceptance is made. Where an offer is made in one state, and accepted by letter or telegraph in another, the contract is completed in the latter state by sending the letter or telegram. So when negotiations for a contract are carried on between parties living in different States, partly by oral communications through an agent, the contract is regarded as made in the State or place, where it first takes effect, so as to become a binding obligation upon both parties. A contract by a traveling agent, which requires ratification by his principal is considered as made at the place where the ratification is given." This is sustained in the foot notes by a large number of cases, so it is no longer an open question. The contract in this case was an application (see Printed Record, p. 13), and when it was received at Scranton, Pennsylvania, a Certificate of Acceptance was sent from Scranton to the defendant. See Printed Record, p. 19 for copy of the notice of acceptance.

The Corporation plaintiff, according to the agreed statement of facts, Printed Record, p. 12, has no office in the State of Kansas for the purpose of "doing business" there, as stated in the agreed statement of facts.

Mr. J. B. Hughes, agent of the Company, has an office for which he pays the rent himself, and also has some Bound Volumes as samples of the books that the Company sells, but he does not sell anything or deliver anything in the State of Kansas. The question, therefore, arises that what the Company is doing is "Commerce." It admits that it is "doing business," but this business is done in Pennsylvania, and it is not "doing business" in Kansas. What it is doing in Kansas is Interstate Commerce.

As hereinbefore stated, and admitted in this case, the Company is engaged in Printing and

Publishing, and giving instruction by correspondence through the mail. For a copy of its charter showing the purpose for which it is incorporated, see ante p. 13. It is, therefore, engaged in selling books. What is a book?

Printing was invented by Guttenberg in 1444. Prior to that books existed only in writing.

The word "paper" is derived from papyrus, the existence of which is traced back to 2400 years B. C. The Egyptian papyrus was probably introduced into Europe in 325 B. C., but was lost sight of in the 12th century. The date when paper was first made in the East is left largely to conjecture. It was probably made in China first, and in Persia and Arabia about 620 A. D.; in Spain in the 8th century; in France in 1189; England, 1330; Germany, 1390; and Pennsylvania in 1690. As books were written prior to the discovery of, or invention of the way to make paper, it necessarily follows that a book can be made without paper or printing.

Interesting articles on these subjects of paper and printing can be found in the different encyclopedias. It is conclusively established that the first writing was done on papyrus leaves or parchment, and the earliest books were in writing, and not printed.

The question of what constitutes a book has been the subject of judicial construction.

Clementi v. *Golden*, 2, Campbell, 25: This was a suit for a piracy in reproducing and selling a song which had been published in a single sheet, and in that form copyrighted. The objection was made that it was not a "book" entitled to the protection of the statute. Lord Ellenborough, contrary to his opinion in a previous case, overruled the objection, and directed the jury to return a verdict, with leave to move for a new trial. In overruling the motion, he accepted the argument of Erskine, in *Hine*. v. *Dale*., and is reported to have said,

among other things: "I do not see at present why a composition printed on a single sheet should not be entitled to the privilege of the statute."

He adds: "I was at first startled at a single sheet of paper being called a "book," but I was afterwards disposed to think that it might be considered within the meaning of the Act of Parliament."

There is nothing in the word "book" to require that it shall consist of several sheets, bound in leather, or stitched in a marble cover. "Book" is evidently from the Saxon word "boc," and the latter term is from beech tree, the rind of which supplied the place of paper to our German ancestors. The Latin word "Liber" is of a similar etymology, meaning originally only the bark of a tree. "Book" may, therefore, be applied to any writing, and it has often been so used in the English language. The Horn book consists of one small page, protected by an animal preparation, and in this state it has universally received the appellation "book."

So in legal proceeding, the copy of the pleadings, whether it be long or short, is called the "Paper book," or "Demurrer book."

In the Court of Exchequer, a roll was anciently denominated a "book," and so continued in some instances to this day. An oath as old as the time of Edward I runs in this form: "And you shall deliver into the Court of Exchequer a book fairly written," etc., but this "book," delivered into court, in fulfilment of this oath, has always been a roll of parchment.

After an argument of the motion for a new trial, the Reporter adds: "The Judges seemed unanimously of the opinion that it could not depend upon a form of publication whether it was entitled to the privileges of the statute or not; that a composition on a single sheet might well be a book within the meaning of the

Legislature, and the verdict of the jury ought not to be disturbed."

Clayton. v. *Stone*, 2 Paine. (U. S.), 382: This suit was an injunction to restrain the copying and reprinting a price current published in a daily paper. Thompson, J., in deciding the case followed *Clementi* v. *Golden* as to what is a book, and says: "A book within the statute need not be a book within the common and ordinary acceptation of the word, viz., a volume of several sheets bound together; it may be printed on only one sheet, as the words of a song or the music accompanying it."

In *Church*. v. *Lintin*. (Ch), 25 Ontario (Canada), Rep. 131, it was held that the "Purely commercial, or business character of a composition, or compilation, does not oust a right to protection of copyright, if time, labor, and expense have been devoted to its production."

A copyright may be had by the proprietors of a school for stammering, of publications consisting of an applicant's blank, consisting of a series of questions to be answered by pupils entering the school and advertisement circular entitled "Information for Stammerers," and an agreement to be signed by pupils entering the School "Entrance Memorandum," and a similar, but formal, agreement entitled "Entrance Agreement."

In Drake on Copyright, 141, note 2: "It never ocurred to the Lord Chancellor who directed the issue, or to Lord Mansfield, or to any of the Judges who decided the case (2 Campbell, 25), that the form of the publication could make any difference, and, therefore, it is not stated."

"If a different construction were put upon the Act, many publications of the greatest genius, both in prose and verse, would be excluded from its benefits; but might the papers of 'The Spectator,' or Grey's 'Elegy in a Country Churchyard' have been pirated as soon as they

were published, because they were given to the world in sheets."

Drury. v. *Ewing.* 1 Bond. 54c: Lavinia Drury was the "authoress and proprietoress" of a chart entitled "The Ladies' Chart for Cutting Dresses, and Basques for Ladies, and Coats and Jackets, etc., for Boys," which was copied by the defendant. The Court says (p. 545): "The first question was whether Mrs. Drury had a copyright, as the defendant claimed that it was neither a book, chart, nor print, the chart being published in one large sheet."

(Page 548): "She doubtless could have given it to the world in a succession of sheets bound together, and constituting a volume, but it is obvious that the chart, for practical purposes, is more easily understood, and therefore more useful, printed on a single sheet large enough to exhibit all diagrams in one view."

It cites the case of *Clementi.* v. *Golden.* 2 Camp. 25, as a leading case, and follows it.

From these decisions and early history it is very plainly and clearly established:—

First: That one sheet of paper, printed or written, may be a book.

Second: That the transmission of letters, through the mail, whether they be printed, written with ink, or typewritten, is publishing.

Third: That the taking of orders for its books in other States by agents employed for that purpose, by the Corporation plaintiff, and accepting such orders in, and filling them from Pennsylvania is commerce.

Fourth: That the selling of courses of instruction by means of agents, seeing the parties desiring the same, and obtaining from them a contract for which, in consideration of the amount they pay, the Company (if the contract is accepted at Scranton), agrees to sell to the party, a set of books in pamphlet form, and give instruction by written letters through the

mail, which letters are books and the selling of books is commerce.

Fifth: That the furnishing of instruction by correspondence by the transmission through the mails by written and printed instruction, and the correction of lessons of students, is commerce.

D

There is a long line of decisions of this Court sustaining the contention of complainant, namely, that the constitution of the United States is binding, and that Congress alone can regulate Interstate Commerce.

The question, therefore, in this case is, whether what the plaintiff is engaged in is the manufacturing of books in Pennsylvania, and sending them to the State of Kansas in the way above stated, to fill orders obtained there and accepted in Scranton, Pa.

Copying from the *syllabi* in a case it says: "Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. To regulate it as thus defined there must be only one system of rules applicable alike to the whole country, which Congress alone can prescribe."

County of Mobile. v. *Kimball*, 102, U. S. 691.

The Cooper Manufacturing Company, an Ohio corporation, made a contract to deliver to Ferguson, et al., in Colorado, a steam engine and other machinery manufactured by the corporation in Ohio. The Cooper Manufacturing Company had not complied with the laws of Colorado relating to Foreign Corporations.

Opinion by Matthews, J., p. 736: "Whatever power may be conceded to a State, to prescribe conditions on which foreign corporations may transact business within its limits, it cannot be

Sixth: That the Company sells books is admitted.

Par. "6. The business of the plaintiff is preparing and publishing instruction papers, textbooks and illustrative apparatus for the same, for courses of study suited for teaching by correspondence through the mails, and forwarding such publications and apparatus to students and instructing them through the mail from Scranton, Pa., in the manner set forth in Exhibit A."

Record, page 11.

Par. "8. The scholarship, instruction papers, textbooks and illustrative apparatus called for under each application accepted, are sent by the plaintiff from Scranton, Pa., directly to the applicant; and instruction is imparted by means of correspondence by mail between the applicant, from his residence, and the plaintiff at Scranton, Pa."

Record, page 12.

Copied from Contract.

"First: (c) That the price hereinafter agreed to be paid for said scholarship shall include a complete set of the Instruction Papers and Examination Questions, in pamphlet form and Drawing Plates used in teaching, which are to be supplied to me in parts as I proceed with my studies."

Record, page 13.

In the opinion of the Court, record page 28, the Court admits that "it is true that the books and instruction papers were prepared and forwarded to the owner of the scholarship from another state."

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admitted to extend so far as to prohibit or regulate commerce among the States; for that would be to invade the jurisdiction which by the terms of the Constitution of the United States is conferred exclusively upon Congress." * * * * * *, and says: "The transaction in question was clearly a question of Commerce and the manufacture of certain machinery in Ohio to be there delivered for transportation to the purchaser in Colorado was Commerce. A state cannot pass an act to prevent Foreign Corporations from selling in Colorado by contract made there, its machinery manufactured elsewhere, for that would be to regulate commerce among the States." Matthews, J., and Blatchford, J., concurred in the judgment.

Cooper Manufacturing Co. v. *Ferguson et al.* 113 U. S. 727.

In the present case the contract was not made in Kansas, but was made in Scranton, Pennsylvania, where the written request of the student for instruction and for the purchase of the books was received and accepted and became a contract.

It is not within the province or power of the State Legislature to require that agents or drummers offering for sale goods, wares, or merchandise by sample which are to be delivered from another State shall pay a license, for the reason that the same is Commerce.

Robbins. v. *Shelby taxing District,* 120 U. S. 489.

The State of Texas passed a statute requiring every commercial traveler or salesman soliciting trade by sample or otherwise to pay an annual occupation tax. Such legislation was declared inoperative so far as it effected one soliciting orders for a business house in another State.

Asher. v. *Texas.* 128 U. S. 129.

In the District of Columbia the Legislative Assembly enacted an ordinance relating to per-

sons engaged in trade, business, or profession which required commercial agents engaged in offering merchandise for sale by sample to take out and pay for a license. It was held, that this is a regulation of Interstate Commerce so far as it is applicable to persons soliciting the sale of goods on behalf of individuals or firms doing business outside the District, and it was not within the constitutional power of Congress to delegate to that legislature authority to enact a clause with such a provision, nor did it in fact do so in a grant of power for municipal purposes.

Stontenburg. v. *Hennick.* 129 U. S. 140.

In regard to a Michigan Statute the Court held: "We have repeatedly held that no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on transportation of the subject of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

Lyng. v. *Michigan,* 135 U. S. 161.

An Act of the State of Kentucky, which forbade the agent of an Express Company, not incorporated by the laws of that State, from carrying on business without first obtaining a license from the State, was held to be a regulation of commerce and invalid. Mr. Justice Bradley, speaking for the Court said:

"The character of police regulation, claimed for the requirements of the statute in question, is certainly not such as to give them a controlling force over the regulations of interstate commerce which may have been expressly or impliedly adopted by Congress, or such as to exempt them from nullity when repugnant to the exclusive power given to Congress in rela-

tion to that commerce. This is abundantly shown by the decisions to which we have already referred, which are clear to the effect that neither licenses, nor indirect taxation of any kind, nor any system of state regulation, can be imposed upon interstate any more than upon foreign commerce; and that all acts of legislation producing any such result are, to that extent, unconstitutional and void."

Crutcher v. *Kentucky*, 141 U. S. 47.

An ordinance in Titusville, Pennsylvania, required all persons canvassing or soliciting within the City of Titusville, orders for goods, books, paintings, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Mayor a license to transact such business, and shall pay to the treasurer therefor certain sums, according to the time for which said license shall be granted, and also prescribed a penalty for failing to procure such license. An agreed statement of facts showed that the manufacturer of the picture frames and maker of portraits, resided in Chicago in the State of Illinois, of which State he was a citizen, and in which State he had his manufactory and place of business; that in the prosecution of his business he employed agents, who under his direction, solicited orders for pictures and picture frames in the State of Pennsylvania and in other States of the Union, by going personally to residents and citizens of said State of Pennsylvania, and exhibiting samples of his pictures and frames. When the orders were obtained they were forwarded to Chicago, where the goods were made, and from there shipped to the purchaser in Titusville by railroad freight and express. The price of said goods was collected and forwarded by the Express Company sometimes, and sometimes by the agent, to the manufacturer at Chicago. It was held in this

case that the license tax demanded was unconstitutional and that it was not within the power of the city of Titusville to enact it or enforce it.

Brennan. v. *Titusville*, 153 U. S. 289.

It is also held in a case arising in Tennessee, where the case was submitted to the Court on two questions, namely: (1) Whether or not the complainants, who had filed a bill to restrain the collection of the tax, were merchandise brokers and subject by the statute to tax as such; (2) whether or not their business constituted interstate commerce, and therefore was beyond the reach of the State's taxing power. The State Supreme Court held that the tax was a valid one under the Constitution of the United States, but this Court on appeal reversed the judgment of the Court in Tennessee and held that the business was interstate commerce and not subject to taxation.

Stockard. v. *Morgan*, 185 U. S. 27.

A case decided in 1902 where the City of Greensboro, North Carolina, passed an ordinance providing that every person engaged in the business of selling or delivering picture frames, pictures, photographs, etc., in Greensboro, should pay a license fee, and in default of paying it, should be fined $20.00, and that every sale should constitute a separate and distinct offense.

The Chicago Portrait Company, a corporation duly incorporated under the laws of Illinois, doing business in Chicago, sent Mr. Caldwell, its agent, to Greensboro for the purpose of delivering certain pictures and frames, for which the contract of sale had previously been made by other employes of the Chicago Portrait Company. Mr. Caldwell went to the railroad freight station, took therefrom a large package of pictures and frames which had been shipped to Greensboro, addressed to the Chicago Portrait Company, carried this package to his rooms in

the Woods House, a hotel in that city, and there broke the bulk and placed each picture in its proper frame and commenced delivering them to the purchasers in the city of Greensboro. He was arrested and fined. This was sustained by the Court of North Carolina, but was appealed to the Supreme Court. The opinion was delivered by Mr. Justice Shiras, who held clearly and distinctly that the Chicago Portrait Company was engaged in commerce, and that the ordinance, so far as it was attempted to apply it to the said company, was unconstitutional and void, as the sole and only power to regulate commerce is in Congress.

"Transactions between manufacturing companies in one state through agents, with citizens of another, constitute a large part of interstate commerce; and for us to hold with the Court below, that the same articles, if sent by rail directly to the purchaser, are free from state taxation, but if sent to an agent to deliver, are taxable through a license tax upon the agent, would evidently take a considerable portion of such traffic out of the salutary protection of the interstate commerce clause of the Constitution."

Upon principle and authority the judgment of the Supreme Court of North Carolina was reversed.

Caldwell. v. *North Carolina*, 187 U. S. 622.

"As the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced

by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety; but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

Connolly. v. *Union S. P. Co.*, 184 U. S. 558.

Of course discrimination against interstate commerce is bad; but the fact that a burden, or condition, or regulation, is laid indiscriminately on foreign and local corporations and on individuals does not help the statute any. States must not interfere with interstate commerce whoever carries it on.

17 Am. & Eng. Encyc. (2nd ed.) 77, and n., collecting cases.

E

Conceding that this is a Pennsylvania contract, as hereinbefore stated, the plaintiff had the right to maintain the action under the Constitution and statute of the United States.

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

Revised Statutes U. S., Sec. 1977.

Cf. 1 Gould & T., Notes Rev. Stat., 475; 2 Id. 177; 3 Id. 398.

A corporation is not a "person" under some sections of the 14th Amendment, but it is under the section which the Civil Rights Act was specially enacted to enforce. If a corporation is engaged in commerce a sister State cannot deprive it of the equal protection of the laws,

which includes the right to resort to the courts for the enforcement of contracts.

Santa Clara County. v. *So. Pac. R. R.* 118 U. S. at 394.

Philadelphia F. A. v. *New York*, 119 U. S. 110 at 120.

Minneapolis Ry. Co. v. *Beckwith*, 129 U. S. 26.

Smyth v. *Ames*, 169 U. S. 466, at 526.

Cotting v. *Goddard*, 183 U. S. 79.

Connolly v. *Union S. P. Co.*, 184 U. S. 540 at 558.

To say that what the plaintiff is doing is interstate commerce business and that it has the right to sell its Books and Courses of Instruction to parties living in Kansas, and yet is outlawed and cannot enforce its contracts or maintain suits, it is respectfully submitted that such a position cannot be maintained, and the judgment of the Supreme Court of Kansas is erroneous.

"The power of a foreign corporation to make and take contracts is utterly ineffectual and illusory, if it does not include the ordinary remedies afforded by the local State to its own citizens and corporations."

6 Thompson, Corporations, Sec. 7977.

"Means of enforcement of a contract is the breath of its vital existence."

Edwards v. *Kearzey*, 96 U. S. at 600.

On the subject of Foreign Corporations the law in Volume 19, "CYC" is clearly and distinctly stated:

"SALE OR PURCHASE OF GOODS THROUGH TRAVELING AGENTS OR DRUMMERS.—Statutes of the kind under consideration have no application to the case, where the corporation sends into the restricting state its traveling agent, who solicits orders for its goods and forwards them subject to approval to the home office, the orders being afterward filled by shipments

to the customer. Such an application of the statute would be inadmissible in so far as state statutes are concerned, because, so applied, it would have the effect of imposing a restraint upon commerce between the states or with foreign countries. The same rule applies to the purchase of goods by an agent to be shipped out of the restricting state."

Volume 19, "CYC," pp. 1272–1273.

'H. STATUTES DO NOT GENERALLY APPLY TO CONTRACTS OUTSIDE THE STATE.—1. In General. Such statutes are not generally allowed to operate so as to impose any restraint upon the making and taking of contracts the *situs* of which is outside the state enacting the statute; and this for two reasons: (1) To allow them to have such an operation would give them an extraterritorial effect beyond the limits of the principle of interstate comity, and (2) it would also, in most cases, interfere with the operations of interstate commerce." Volume 19, "CYC," p. 1276, etc. See cases in the foot notes. See also:

Havens & Geddes. v. *Diamond*, 93 Ill. App. 557.

McMillan Co. v. *Stewart*, 69 N. J. Law, 212.

W. B. Faxen. v. *the Lovett Co.*, 60 N. J. Law, 128.

This question of the right to sue has been decided on a contract signed by a defendant in Michigan in which it was stipulated that it should not be binding until approved by the Company, a Foreign Corporation, at Akron, Ohio. The defense was that the plaintiff not having complied with the franchise fee act (Compiled Laws of 1897, Section 8574) the contract was void. The Court held that the contract was not made in Michigan within the meaning of the statute and, therefore, could be enforced by the plaintiff.

Aultman. v. *Holder*, 169 U. S. 81.

In other words, the mere fact that a Foreign Corporation without complying with such a statute makes a contract with a domestic citizen or takes a contract from him, it is not unlawful, but the contract may be enforced in a judicial proceeding.

Volume 19, "Cyc," p. 1275.

The business of conducting communication by telephone or telegraph between persons of different States is Interstate Commerce, held: within the power of regulation provided by Congress, and free from the control of State regulations as to taxing.

F

The fourth and fifth assignments of error may be considered together.

The Federal Constitution, Article 14, Section 1, provides, "No state shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The statute of the United States, provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens."

Revised Statutes U. S., Sec. 1977.

Cf. 1 Gould & T., Notes Rev. Stat., 475; 2 Id. 177; 3 Id. 398.

I need not repeat what is said under heading "E," page 28 of this Brief, on the subject of the right to maintain this action.

The law may be considered as well settled that the right of individuals of different States

to make contracts is not to be abridged. To deny the plaintiff the right to enter into this contract at the time when it was entered into, in the State of Pennsylvania, is to deny the right constitutionally provided for by the constitution of the United States, that all people shall have equal right to make contracts.

In a Pennsylvania case where an employe gave an order upon his employer to pay a certain sum of money out of his wages, there was an act of the Legislature which provided that laborers should be paid at regular intervals in money of the United States, and could not give orders upon their wages. It was held by the Supreme Court of the State: "The first, second, third, and fourth sections of the Act of June 29, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the Legislature to do what, in this country, cannot be done; that is, prevent persons who are *sui juris* from making their own contracts. The Act is an infringement alike of the rights of the employer and employe. More than this, it is an insulting attempt to put the laborer under the legislative tutelege, which is not only degrading to his manhood but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

Godcharles & Co. v. *Wigeman*, 113 Pa. St. 431.

In a leading case on the Fourteenth Amendment of the constitution the Justice in delivering the opinion, says: "The Fourteenth Amendment which was finally adopted July 28, 1868, largely expanded the power of the Federal courts and Congress, and for the first time

authorized the former to declare invalid all laws and judicial decisions of the states abridging the rights of citizens or denying them the benefit of due process of law."

Holden v. *Hardy*, 169 U. S. 366.

In a case in the State of Louisiana, Mr. Justice Peckham says: "In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, must be embraced the right to make all proper contracts in relation thereto, and although it may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of the state, may be regulated and sometimes prohibited, when the contracts or business conflict with the policy of the state as contained in its statute, yet the power does not, and cannot extend to prohibiting a citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction."

Allgeyer. v. *Louisiana*, 165 U. S. 578.

The plaintiff corporation is a person within the intent of the clause in section 1 of the Fourteenth Amendment.

Santa Clara Co. v. *So. Pac. R. Co.* 118 U. S. 394.

II

In Conclusion

The question which I have attempted to argue upon this writ of error, is: what constitutes a book, and that the dealing in books, as is done by the Corporation Plaintiff, is Commerce. I do not find that this question has ever been presented to this Court in the way in which I am presenting it. The question that "Commerce" cannot be interfered with has been frequently decided. If, as contended, a *letter* is a book, then this case comes before this Court as a new

question, and this Court is requested to decide upon the broad and fundamental proposition that it is COMMERCE, and that the Statute, under consideration, not only of Kansas, but similar Statutes in all the other States in the Union, which under the same conditions interfere with the business of the Company, is, and are unconstitutional.

Not only do the different States pass laws relating to Foreign Corporations "doing business," but in nearly every City and Borough of the United States are ordinances requiring agents of foreign corporations who may solicit orders for goods manufactured by their principal, and who, as in this case, solicit orders for books, to take out a license for the privilege of doing so, and to pay a license fee therefor under a penalty, of fine or imprisonment for failure to do so. There are also City Ordinances against the distribution of Circular Matter, and agents are required to pay for and take out a license, and in many cases wear a badge, with similar penalties for failure to do so.

If the plaintiff can have an authoritative declaration from this Court, that its business is Commerce, from which a conclusion can be drawn, that any State Statute, or City Ordinance, which interferes with it, is unconstitutional, a great stumbling block will be removed, and the Company be saved a large expense.

The Company enrolled its first student October 16, 1892. At the date of printing this paper book in 1907 it has enrolled, in the few years it has been in business, over one million fifty thousand students living in different parts of the world.

It is the largest educational institution in the world, and reaches a class of people who need education, who desire it, but who are not able to attend a college or technical school, and who can obtain an education only in this way.

It is no longer an open question that a certain

amount of education is an absolute necessity. By reference to the constitutions of the different States in the Union, it will be found that in them, attention is called to the fact that the permanence and stability of our institutions and civil government depend upon it. Legislatures are required by suitable legislation to encourage and promote the intellectual, literary, scientific, mechanical, technical, agricultural, and moral improvement of the youth, making it the duty of the Legislature to provide the means for giving a certain amount of education, and to compel those between certain ages to attend school.

If the young are to be successful in life as literary men, they must have a literary education; if as business men, they must have an education to fit them for that position, and if they are to be workmen or artisans, in whatever trades they may be engaged, they must have all the education they can acquire, to best fit them for the various avocations they intend to pursue.

In many cases the safety not only of their fellow employes, but also that of the public, depends on the employes being not only proficient in handiwork, but also educated to know how to take care of themselves and others in the trade they are pursuing. This is particularly so in regard to railroad engineers, machinists, and electricians, in fact in every trade in which men are engaged.

So important is this subject that Congress on March 2, 1867, provided a Bureau of Education, and made it a part of the office in the Interior Department July 1, 1869. Every year, reports from this Bureau are filled with interesting information. I refer to the Report of 1897, Volume 1, Chapter 6, as to what was said on the subject of commercial education, and on page 705 to the report on technical education; and in Volume 2, page 1163, to what is

said with regard to the constitution and laws of the different States.

Education is such a necessary, that many Courts have held and all should hold, that it is a necessary for which a minor can contract, the same as he can contract for food to eat, raiment to wear, medical attendance, etc.

If the Corporation complainant is obliged to pay for filing its charter in the different States, it will cost thousands of dollars to do so, and in addition will cost thousands of dollars annually for it to make reports to the States and to pay the tax as required by the different Statutes. It will also cost thousands of dollars to take out the licenses required by the City and Borough ordinances. If it does this, it will have to raise the prices of its Courses of Instruction, and the burden will in the end, fall back upon those who are, perhaps, the least able at the time to pay it.

The Company does not ask to be relieved from taxation, if it is right that it should be taxed, but if its contention, that what it is doing is Commerce, is sustainable, it is respectfully submitted, that the construction contended for should be sustained, and the judgment under review should be reversed, and judgment entered for the plaintiff in error for the amount as stipulated in the agreed statements of facts.

Dated Scranton, November 18, 1907.

DAVID C. HARRINGTON,
Of Counsel for Plaintiff in Error.

26701-11-14-07-100

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No. ~~170~~

OCT. TERM, 1908

IN THE

SUPREME COURT of the UNITED STATES

ON WRIT OF ERROR TO THE
SUPREME COURT OF THE STATE OF KANSAS

INTERNATIONAL TEXTBOOK COMPANY — *Plaintiff in Error*

Against

AARON T. PIGG — *Defendant in Error*

ADDITIONAL BRIEF FOR PLAINTIFF IN ERROR

DAVID C. HARRINGTON,
Of Counsel for Plaintiff in Error

Supreme Court of the United States

October Term, 1908
No. 170

INTERNATIONAL TEXTBOOK COMPANY,
Plaintiff in Error,

vs.

AARON T. PIGG,
Defendant in Error.

Writ of error to the Supreme Court of the State of Kansas

ADDITIONAL BRIEF FOR PLAINTIFF IN ERROR

In the celebrated and leading case of Gibbons vs. Ogden, Mr. Chief Justice Marshall, on page 189, defines commerce. He says, among other things:

"Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce which shall * * * * * be confined to prescribing rules for the conduct of individuals in the

actual employment of buying and selling, or of barter."

Gibbons vs. *Ogden*, 9 Wheaton, *1*.

In Pensacola Telegraph Co. vs. Western Union Telegraph Co., Mr. Chief Justice Waite defines commerce as follows:

"Since the case of Gibbons vs. Ogden, 9 Wheaton, 1, it has never been doubted that commercial intercourse is an element of commerce which comes within the regulating power of Congress. Post-offices and post-roads are established to facilitate the transmission of intelligence * * * *. The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as those new agencies are successively brought into use to meet the demands of increased population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the General Government for the good of the nation, it is not only the right but the duty of Congress to see to it that intercourse among the states and the transmission of intelligence are not obstructed or unnecessarily incumbered by state legislation."

In this case the State of Florida had granted an exclusive franchise to the Pensacola Tele-

graph Co. for the erection of telegraph poles, and the stringing of wires thereon within that State. The Western Union Tel. Co. had made a contract with the railroad company to set poles, string wires, and conduct a telegraph business in the State of Florida. The Pensacola Co. sought to enjoin the Western Union Co., claiming the right to do so by reason of the exclusive franchise granted by the State of Florida. The Supreme Court held that the State of Florida could not grant such an exclusive franchise because the telegraph was an instrument of interstate commerce, and though it conveyed nothing tangible into or out of the state, nevertheless, it was subject to the control of Congress by virtue of the commerce clause of the Constitution, and that neither the State of Florida nor any other state had a right to impose any burden upon anything thus subject to interstate commerce and thereby regulate such commerce, which right under the Constitution is granted exclusively to Congress.

Pensacola Telegraph Co. vs. *Western Union Telegraph Co.*, 96 U. S., 1.

A statute in Illinois which related to the transporting of goods from the interior of the State of Illinois to New York; such transportation was "Commerce among the States," and the Statute was held to be unconstitutional.

Wabash, St. Louis & Pacific R. R. Co. vs. *Illinois*, 118 U. S., 557.

The Bridge Company, a corporation incorporated under the laws of Kentucky, built a bridge over the Ohio River at Cincinnati. Subsequently a statute was passed with reference

to collecting tolls, fares, etc., and the rates for which tickets should be sold to passengers. Held: That the act in its effect upon the Bridge Company violated the provision of the Constitution of the United States, as traffic across the river was Interstate Commerce.

Covington and Cincinnati Bridge Company vs. *Kentucky*, 154 U. S., 204.

A license tax required for the sale of goods is, in effect, a tax upon the goods themselves. The statute of Missouri which requires the payment of a license tax from persons selling goods manufactured in another State is in conflict with the power vested in Congress to regulate Commerce among Foreign Nations and among the several States. The non-exercise by Congress of its power to regulate Commerce among the several States is equivalent to a declaration by that body that such Commerce shall be free from any restriction.

Welton vs. *State of Missouri*, 91 U. S., 275.

Statute of the States of New York and Massachusetts imposing a tax upon alien passengers arriving in the ports of those States declared to be contrary to the Constitution and laws of the United States, and therefore null and void. See also opinion of Mr. Justice Grier, page 462.

Passenger Cases, 7 Howard, 283.
Affirmed, Henderson et al. vs. *The Mayor of New York et al.*, 92 U. S., 259.

The act of the Legislature of Tennessee imposed a privilege tax of $50.00 per annum on every sleeping car or coach used or run over a Railroad in Tennessee and not owned by the

Railroad on which it is run or used, is void so far as it applies to interstate transportation of passengers carried over the Railroads in Tennessee into or out of or across that State, in sleeping cars owned by a corporation of Kentucky and leased by it for transportation to the Tennessee Railroad corporation, the latter receiving the transit fare and the former the compensation for the sleeping accommodations.

Pickard vs. *Pullman Southern Car Company*, 117 U. S., 34.

The code of Maryland provided that "no person or corporation other than the grower, maker or manufacturer shall barter, sell or otherwise dispose of, or shall offer for sale any goods, chattels, wares or merchandise within the State, without first obtaining a license in the manner herein prescribed." A, a citizen a resident in New York, was indicted under this statute for offering to sell by sample in Baltimore without first obtaining a license, goods for a New York firm to be shipped by them directly to the purchaser in Baltimore. Held: That this enactment of the code as applied to A violated that provision of the Constitution of the United States which grants to Congress the power to make regulation of Commerce among the States.

Corson vs. *Maryland*, 120 U. S., 502.

Under the authority conferred upon Congress by Par. 8, Article 1, of the Constitution, "to make all laws which shall be necessary or proper for carrying into execution" the power "to exercise exclusive legislation in all cases what-

soever over" the District of Columbia, Congress may constitute the District a body corporate for municipal purposes, but can only authorize it to exercise municipal powers.

Robbins vs. *Shelby Taxing District*, 120 U. S., p. 489.

A telegraph company engaged in transmitting messages between different States, such telegrams constitute Commerce, and if carried on between different States they are Interstate Commerce and within the power or regulation provided by Congress, and free from the control of State regulations as to taxing them.

Leloup vs. *Port of Mobile*, 127 U. S., p. 640.

See also

Ratteman vs. *Western Union Telegraph Co.*, 127 U. S., 411.

A telegraph company accepting the regulating power of Congress under the provisions of title 65 of the revised statute makes it an agent of the United States so far as business of the government is concerned, and where it has accepted this provision, State laws so far as they impose upon it a specific tax upon the messages which it transmits beyond the State, or which any officer of the United States sends over its lines on public business, are unconstitutional.

Telegraph Co. vs. *Texas*, 105 U. S., 460. Affirmed in *Western Union Telegraph Company* vs. *Pendleton*, 122 U. S., 347.

Mr. Justice Field, after stating the case, said, *inter alia*, on page 359, "The Supreme

Court of Indiana placed its decision in support of the statute, particularly upon the ground that it is in exercise of the police power of the State." This was not sustained, and the Court says that the statute should not encroach upon the fair exercise of the power vested in Congress by the Constitution.

Even the selling of lottery tickets by one State into another is Interstate Commerce. An agent was arrested in Chicago for selling lottery tickets. (The facts are fully stated in the case.) In the opinion of Harlan, J., he says that it was claimed that the lottery tickets were not of any substantial value in themselves, and, therefore, not subject to Commerce, and further says on page 354, "We are of the opinion that lottery tickets are subjects of traffic and, therefore, are subjects of Commerce, and the regulation for carrying such tickets from State to State, at least by independent carriers, is a regulation of commerce among the several States," and on page 355 says, "We said that the carrying from State to State of lottery tickets consists of Interstate Commerce, and the regulation of such Commerce is within the power of Congress under the Constitution."

Lottery case, 188 U. S., 321.

"It is well settled by numerous decisions of this Court that a State cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce within its limits."

Norfolk Etc. R. Co. vs. *Pennsylvania*, 136 U. S., 118.

A statute of North Carolina required all

persons selling sewing machines in the State to pay a tax of $350 and obtain a license, etc.

The Railroad Company carried into the State a sewing machine sold by a Chicago corporation, the sale of which was not to be completed until the machine was paid for.

Brown, J., held this was interstate commerce and the statute unconstitutional, affirming and following *Asher* vs. *Texas*, 127 U. S., 129; *Welton* vs. *Missouri*, 91 U. S., 275; *Walling* vs. *Michigan*, 116 U. S., 446; *McCall* vs. *California*, 136 U. S., 104; *Crutcher* vs. *Kentucky*, 141 U. S., 47; *Brennan* vs. *Titusville*, 153 U. S., 289; *Stoddard* vs. *Morgan*, 185 U. S., 27; and *Caldwell* vs. *North Carolina*, 187 U. S., 622.

Norfolk & West. Ry. Co. vs. *Sims*, 191 U. S., 441.

A statute of Virginia requiring that an agent for the sale of articles manufactured in other States must first obtain a license for which he is required to pay a specific tax for each county in which he sells, or offers to sell them, while the agent for the sale of articles manufactured in that State, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Held, that the statute is in conflict with the commerce clause of the Constitution of the United States, and void.

Webber vs. *Virginia*, 103 U. S., 344.

An agent in San Francisco engaged to induce passengers to go over a line to New York by way of Chicago, but not selling tickets or receiving or paying out money on account of it, is an agent engaged in interstate commerce, and a license tax imposed upon the agent for

the privilege of doing business in San Francisco is a tax upon Interstate Commerce, and the city ordinance is unconstitutional.

McCall vs. *California*, 136 U. S., p. 104.

Bill in equity in U. S. Circuit Court to restrain interference with contract by subsequent State legislation and city ordinance. Bill dismissed for want of jurisdiction.

Appealed to Supreme Court of U. S.

Shiras, J., p. 82: "It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainant's rights under the contract, that mere apprehension that illegal action may be taken by the city cannot be the basis of enjoining such action, and that therefore the Circuit Court did right in dismissing the bill. We cannot accede to this contention. It is one often made in cases where bills in equity are filed to prevent anticipated and threatened action. But is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

Decree of Circuit Court reversed, etc.

Vicksburg Waterworks Co. vs. *Vicksburg*, 185 U. S., 65.

4525-4-14-09-50

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 434.

INTERNATIONAL TEXTBOOK COMPANY, Plaintiff in Error, AGAINST AARON T. PIGG.	In error to the Supreme Court of the State of Kansas.

BRIEF FOR THE PLAINTIFF IN ERROR.

I.

Nature of Case.

The plaintiff in error and plaintiff below, a Pennsylvania corporation, brought this action in the Court of Topeka, Kansas, on March 31, 1906, against the defendant, A. T. Pigg, to recover the sum of $79.60, due to the plaintiff under a contract between the plaintiff and defendant, the

substance of which contract was that the plaintiff agreed to sell and deliver by shipment from Scranton, Pennsylvania, to the defendant in Topeka, Kansas, certain copyrighted printed pamphlets, called "instruction papers." The defendant was further entitled to the loan of a bound volume of these instruction papers together with an "outfit" of other educational facilities suited to the course of study which he elected to pursue, and the plaintiff further agreed to supervise, by correspondence with the defendant through the United States mails, his study of the printed educational treatises thus sold.

Judgment was given by the Court of Topeka for the defendant, on the sole ground that the plaintiff had failed to comply with the Kansas statutes regulating the right of foreign corporations to "do business" in that State. This was the only defense offered to the claim. The plaintiff admitted that it had not complied with these requirements, but contended that as it was engaged, as to the subject matter of the suit, in a transaction of interstate commerce, the requirements of the Kansas statutes in question, if applicable to the plaintiff, were void as in violation of the Constitution of the United States.

The plaintiff thereupon appealed to the District Court of Shawnee County, Kansas, which affirmed the judgment of the Topeka Court. As appears from the certificate of that Court (Record, p. 23), the action was "one in which rights claimed under the Constitution and Laws of the United States are asserted and necessarily passed upon."

Thereupon the plaintiff appealed to the Supreme Court of the State of Kansas, that being the highest court of that State, which with one Justice dissenting affirmed the judgment of the District Court of Shawnee County.

The opinions of the majority and minority Justices will be found on pp. 25 to 28 of the Record.

Both in the District Court of Shawnee County and in the Supreme Court of the State of Kansas, the plaintiff at all times insisted that if the statutes of the State of Kansas, upon which the defendant solely relied for his defense, could be construed as applicable to the plaintiff company and its business, such statutes were "repugnant to the Constitution of the United States." In the petition filed with the Supreme Court of Kansas for an allowance of a writ of error to this court, which petition was

allowed by the Chief Justice, the plaintiff specifically contended that the Kansas statutes, as construed by the highest Court of that State, were in violation of Art. 1, Sec. 8, of the Constitution and the Fourteenth Amendment (Rec., p. 30).

All the facts are embodied in an agreed statement (Record, pp. 11 to 20).

II.

Statement of Facts.

The plaintiff is a Pennsylvania corporation and owns and conducts the International Correspondence School. Its business is the "preparing and publishing instruction papers, text books and illustrative apparatus for the same, for courses of study, suited for teaching by correspondence through the mails and forwarding such publications and apparatus to students and instructing them through the mail, from Scranton, Pennsylvania, in the manner set forth in" the contract between the plaintiff and defendant (Record, p. 11).

In carrying on this business, the plaintiff employs local or travelling agents with the title of "solicitor-collector", and such agents "procure and forward to the plaintiff at Scranton, Pennsylvania, * * * applications for scholarship in the International Correspondence School and then collect and forward deferred payments on scholarships issued by the plaintiff" (Record, p. 11).

In consideration of such payment "the scholarship, instruction papers, text-books and illustrative apparatus called for under each application accepted are sent by the plaintiff from Scranton, Pennsylvania, directly to the applicant; and instruction is imparted by means of correspondence by mail between the applicant from his residence, and the plaintiff at Scranton, Pennsylvania" (Record, p. 12).

The plaintiff, on October 10, 1905, signed in Topeka, Kansas a subscription agreement, fully recited in the Record (pp. 13 to 20), and this agreement was received by the plaintiff in Scranton, Pennsylvania, and was by it there approved and accepted. By said agreement, the plaintiff agreed to pay five dollars at the time of his subscription (which was paid) and five dollars each month

thereafter until the full sum of $94 was paid (Record, p. 13).

This suit is brought to recover the balance of the subscription price.

The defendant agreed that the payment of said monthly sums should " include,"—

"(*a*) All charge for instruction in all subjects of the course for which said scholarship calls, until I (the subscriber) am qualified to receive a diploma or certificate of proficiency, provided I complete said course within five years from the date hereof.

(*c*) A complete set of the instruction papers and examination questions in pamphlet form and drawing plates used in teaching, which are to be supplied to me in parts, as I proceed with my studies " (Record, p. 13).

It was further agreed (Record, p. 13) that the plaintiff would loan to the defendant

> " a set of bound volumes which shall consist as nearly as possible of a complete set of the copyrighted instruction papers and examination questions, drawing plates and keys, used in the course of instruction with which it is furnished, conveniently arranged for reference, all fully indexed and bound in half leather, valued at $5 per volume,"

which books the subscriber agreed to return if he failed to keep up his monthly instalments, but for the loss, destruction or damage to which he was not responsible if he paid his subscription in full (Record, p. 14). The contract contained no provision for the return of these bound volumes if the subscription was paid in full.* Their printed contents, however, as issued in parts in pamphlet form, were expressly included in the price of the subscription, and became the absolute property of the subscriber. The contract for the scholarship was assignable by the subscriber when the subscription was fully paid (Record, p. 13).

"The plaintiff has no office in the State of Kansas, for the purpose of doing any business other than that herein stated," viz., the solicitation of said contracts and the collection of the instalments (Record, p. 13).

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* The conditional character of the sale and the terms of payment do not affect its character as interstate commerce. This Court has held that the right of those engaged in interstate commerce

> "to fix by agreement the time when the condition on which the completed title should pass is beyond question."
> American Express Co. v. Iowa, 196 U. S., 133.

In substance the Kansas Statutes (fully printed in Appendix, *post*, pp. 59–65) provide (Sec. 1260) that a foreign corporation

> " seeking to do business in this State, shall make application to said Board (Charter Board) * * * * *for permission* * * * * to engage in business as a foreign corporation in this State."

Such application must contain—1. A certified copy of its charter or articles of incorporation. 2. The location of its place of business. 3. The full name and character of its business. 4. The names and addresses of the officers, trustees, directors and stockholders. 5. A detailed statement of its assets and liabilities "and such other information as the Board may require in order to determine the solvency of the corporation ".

Such corporation (Sec. 1261) shall also pay a charter fee of $25 and as a further condition precedent to obtaining authority to transact business in this state, said corporation shall file in the office of the Secretary of State its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in the state in which the

cause of action arose or in which the plaintiff may reside, by the service of process on the Secretary of State and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the President or chief officer of such corporation.

Sec. 1263 provides that the Charter Board shall hold at least one meeting each month and "shall make a careful investigation of each application and shall inquire especially with reference to the character of the business in which the proposed corporation is to engage", and the Board shall determine whether the business or undertaking is one for which a corporation may lawfully be formed and whether the applicants are acting in good faith. The Board shall also make special inquiry with reference to the solvency of such corporation, and for this purpose may require such information and evidence as they may deem proper. If it shall determine that a foreign corporation is properly organized in accordance with the laws of the State, Territory or foreign country under which it is incorporated, that its capital is unimpaired and that it is organized for the purpose for which a do-

mestic corporation may be organized in this State, the application shall be granted.

In addition to the application fee of $25, each foreign corporation, before engaging in business in Kansas must (Sec. 1264) pay to the State Treasurer of Kansas for the benefit of the permanent school fund, a charter fee of one-tenth of one per cent. of its authorized capital upon the first $100,000 of its capital stock or any part thereof, and upon the next $400,000 or any part thereof, one-twentieth of one per cent., and for each $1,000,000 or major part thereof over and above the sum of $500,000, $200.

In addition to this charter fee, further fees are provided for recording a charter.

Sec. 1283 provides that all corporations for profit "doing business in this State, except banking, insurance and railroad corporations", shall annually, on or before the first day of August, file with the Secretary of State a complete detailed statement of the condition of such corporation on the 30th day of June next preceding. Such statement shall set forth the authorized capital stock, the paid up capital stock, the par value and market value per share, a complete and detailed statement of the assets and

liabilities, a full and complete list of stockholders, with post office addresses of each and the number of shares held and paid for by each, the names and addresses of the officers, trustees, directors and managers and the manner of their election, "and the Secretary of State may at any time require a further and supplementary report under this section, which shall contain the same information and data as specified in the annual report herein required".

Failure by a foreign corporation to file these statements within ninety days from the time prescribed shall work a forfeiture of its right or authority to do business in Kansas, and the Charter Board may at any time declare such forfeiture.

Sec. 1283 further provides:

> "No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the Secretary of State, that statements provided for in this section have been properly made."

The agreed statement of facts expressly provides (Record, p. 11).

> " 3. That unless the plaintiff is debarred from maintaining this action by reason of its failure to comply with the statutes of Kansas, as hereafter appear from this statement of facts, the plaintiff is entitled to judgment as prayed for in the bill of particulars."

In the Court of Topeka, in which the case was first tried, the defense was, as appears by the record (p. 8), that the plaintiff " has failed to comply with the statutes of this state in such case made and provided."

In the formal answer filed by defendant in the District of Topeka, it was further averred (Record, p. 10).

> " That the plaintiff corporation had at no time complied with the corporation laws of of the State of Kansas and has never received authority to do business in the State of Kansas."

And in the agreed statement of facts, as the sole defense to the plaintiff's claim, it is further provided (Record, p. 12)

> " That the plaintiff has never filed with the Secretary of State of the State of Kansas its consent to be sued by the service of summons upon said Secretary; or any application for authority to do business in the State of Kansas; or any annual re-

ports; and it has no certificate from the Secretary of the Charter Board or from the Secretary of State as to such matters."

Judgment was entered for the defendant both by the Court of first instance and the Supreme Court for the plaintiff's failure "to comply with the corporation laws of the State."

III.

Assignment of Errors.

The plaintiff in error alleges error in the judgment here under review as follows:

1. The Court erred in finding that the Corporation plaintiff was bound by the laws of the State of Kansas in Sections 1260 to 1268 incluclusive, and Section 1283 of the General Statutes of Kansas of 1901, which required corporations of other states to file a copy of their charter, make payment of charter fee, the filing of consent to be sued by substituted service, the obtaining of authority to do business, and the filing of annual reports as conditions precedent to the doing of business in Kansas, or the maintaining of actions in Kansas courts.

2. Error in holding that the Corporation plaintiff was doing business such as to bring it within the purview of the meaning of the said statute of Kansas as referred to in assignment of error number I.

3. Error in holding that Sections 1260 and 1268, inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 8, Article 1, of the Constitution of the United States, relating to the regulation of commerce among the several states.

4. Error in holding that Sections 1260 and 1268, inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 1 of the 14th Amendment to the Constitution of the United States forbidding any state to deny to any person the equal protection of the laws.

5. Error in holding that Sections 1260 and 1258, inclusive, and 1283 of the General Statutes of Kansas of 1901 as applied to the Corporation plaintiff is not in conflict with Section 1977 of the Revised Statutes of the United States re-

lating to equal rights to resort to the courts for the enforcement of contracts, and equal benefits of all laws for the security of persons and property.

6. Error in not entering judgment for the Corporation plaintiff for the amount as provided and stipulated in the agreed statements of facts.

IV.

ARGUMENT.

I.

The contract between the plaintiff and the defendant for the shipment by the plaintiff from Scranton, Pennsylvania, to the defendant in Topeka, Kansas, of printed and documentary merchandise for a pecuniary consideration, was a transaction of interstate commerce.

This inquiry lies at the very threshold of the case. In its true answer, regard must be had to the substance and not to the mere form of the transaction. It has been recently said by this Court in Rearick v. Pennsylvania, 203 U. S., 507, 512, that

> " commerce among the several States is a *practical* conception not drawn from the ' witty diversities ' (Yelv., 33) of the law of sales."

In an earlier but a very recent case, Swift v. U. S., 196 U. S., 375, 398, this Court said that

> " commerce among the States is not a technical legal conception but a *practical* one drawn from the course of business."

It is therefore important to determine preliminarily what is the true nature of the plaintiff's business.

Its business is essentially and practically that of compiling, printing, selling and shipping educational publications. As such it is one of the greatest, if not the greatest, educational publication house in the world.* Its publications cover a wide range of subjects and almost every department of human study. As appears by the

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* In support of this statement and to illustrate the possibilities of plaintiff's business, it may be permissible to give the following data. It is due to the Court, however, to state that the agreed statement of facts does not contain such data, except in so far as the printed contract shows the wide scope of the educational literature which the plaintiff publishes. The following data, therefore, is submitted, with the explanation that these statistics are no part of the agreed statement of facts upon which the judgment of this Court will be finally predicated but that they are given as an illustration of the possibilities of plaintiff's business, in the same manner and for the same purpose as the statistics of railroad development or the growth of insurance companies could be brought to the attention of the Court in connection with a general inquiry as to the essential nature either of railroad transportation or of the insurance business.

The Company was formed on October 16, 1891, and it has today $6,000,000 of paid up capital; 2,800 employees, including an instruction staff of 400 trained teachers; 200 courses of study; its pamphlets and textbooks are protected by 5,700 copyrights; it has three home office buildings, of seven acres floor space, and its annual expenditures include $100,000 for postage, $350,000 for printing and $250,000 for preparation and revision of courses. It has enrolled to April 1, 1909, over 1,100,000 purchasers of its educational literature. Its printing establishment issues over 25,000,000 separate pieces of printed matter each year. In the first fifteen years of its existence, its receipts were over $28,000,000.

contract (Exhibit "C," Record, p. 19) it publishes and sells printed pamphlets with reference to architecture, chemistry, civil engineering, commerce, the languages, mathematics, mechanical engineering, mineralogy, pedagogy, structural engineering, electrical engineering, and many other less technical and pretentious studies. These "instruction papers," printed in pamphlets averaging about fifty printed pages, are compiled with great care and at great expense, copyrighted as other publications and forwarded direct from the publication house in Scranton, Pennsylvania, to vendees in every part of the world through the channels of interstate and foreign commerce. This immense publication house only differs from an ordinary publication house in that it contracts with its vendees to purchase not one book or pamphlet but a series of books or pamphlets, all having reference to some course of study which the vendee elects to take, and this education is supplemented by personal communication by the plaintiff with its vendee through the United States mails. As to some courses of study the educational pamphlets are supplemented by the delivery to the vendee of other valuable merchandise, such as drawing plates, drawing outfits,

chart work outfits, phonograph outfits, models and other philosophical apparatus.

The difference therefore between the plaintiff and any ordinary publication house is simply that it sells printed matter bearing upon some course of study and supervises by correspondence through the mails its educational use. In this respect the idea is a novel one and has already made the International Correspondence School one of the great educational institutions of the present time.

Its founder foresaw the immense possibility of bringing inexpensive education directly to the homes of the people. He recognized the possibility of self-education by reading, if directed by intelligent supervision. Recognizing that Franklin had, by reading and independent experimental research and without the training of a college or university, made himself one of the profoundest philosophers, scientists and statesmen of his own or any century, this institution was founded and carried forward to extraordinary success upon the basic assumption that if the reading habit, which now prevails with all classes and conditions of men, could be intelligently directed by an educational

publishing house, not only would the cause of education be incalculably advanced but a great commercial enterprise could be founded and perpetuated upon this educational system. In all this the results have more than vindicated the sagacity of its founder.

Its educational purpose however does not strip it of its essential character as a commercial enterprise. Nor does the printed merchandise which it sells become less articles of commerce because their publication, sale and shipment are simply a part of an educational system. Nor does the use of the word "scholarship" strip the contract between the appellant and its vendee of its essential character as a contract to purchase a series of educational pamphlets.

Other publishing houses also deal only with educational publications; some, for example, deal wholly with medical treatises, but the commercial nature of their business is not affected by the character of their product. Nor does the fact that the appellant undertakes through the mails to supervise the reading of the books which it sells affect the commercial nature of the contract. If Harvard University

were to enter into contracts to sell to various purchasers selected text books with the agreement that those who purchased should have the privilege of communicating through the mails with its faculty and obtain supplemental information, the commercial character of the sale would in no respect be affected. If this be true of a distinctly educational institution like Harvard University it is doubly true of a publishing house like that of the plaintiff, which came into existence and still conducts its business primarily and principally for the purpose of compiling, printing and selling educational text books for commercial profit.

The case, therefore, presents every element of a transaction of interstate commerce. There is a vendor and a vendee, a thing bought and a thing sold, a price paid and merchandise delivered. Such merchandise is physically delivered by the vendor directly to the vendee and such delivery is effected, as in the case under consideration, by a continuous and unbroken shipment from a destination in one state to a destination in another.

Clearly from every "practical" standpoint, by whatever name it is known and whatever its

ultimate purpose, this extenstve commerce in literary merchandise does constitute "a current of commerce among the States" (Swift v. United States, 196 U. S., 375, 399.)

Indeed the Supreme Court of Kansas does not expressly negative the commercial and interstate character of the plaintiff's business. It simply concludes that the plaintiff was "doing business" in Kansas and without discussing the effect of the "commerce clause" of the Constitution it simply holds that the plaintiff was a foreign corporation "doing business" within the meaning of such statutes. It rests its ruling upon one of its prior decisions (Deere vs. Wyland, 69 Kansas, 255), which holds that the statutory requirements do not constitute an unconstitutional burden on interstate commerce. This question will be discussed under the second point of this brief. (*Post*, p. 31.)

The decisions of this court can leave no doubt as to the commercial character of the plaintiff's business. Even if the "instruction papers" were not regarded in common with all other educational publications as printed merchandise but simply as printed information of a peculiar or special character it would nevertheless be

within the commerce clause of the Constitution. To sell information in a concrete and tangible form, as in a printed pamphlet, is as much a commercial transaction as to sell a bushel of wheat or a pound of iron.

In Gibbons v. Ogden, 9th Wheaton, 1, 4, Chief Justice MARSHALL gave the all-comprehensive definition of commerce which neither time nor changed conditions have made obsolete. He said:

> "The counsel for the appellee has limited it (commerce) to traffic, to buying and selling or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term applicable to many objects to one of its significations. *Commerce undoubtedly is traffic, but it is something more. It is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse.*"

Even more pointed is the following language of Mr. Justice JOHNSON'S concurring opinion in Gibbons v. Ogden (p. 27):

> "Commerce in its simplest signification means an exchange of goods, *but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange become commodities and enter into commerce.*"

In the Passenger Cases (7 Howard, 282), the mere entry of passengers into a port was held to be commerce, although such passenger may come and go without any special reference to the purchase or sale of commodities.

In Covington Bridge Company v. Kentucky, 154 U. S., 204, 218, Mr. Justice BROWN said:

> "Commerce was defined in Gibbons v. Ogden, 9th Wheaton, 189, to be intercourse, and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool."

Indeed, the mere *transmission of intelligence or information* has been held to be commerce, and that without regard to its strictly commercial purpose. Thus, the invisible messages, which are transmitted along telegraph lines from citizens of one state to citizens of another, were held to be interstate commerce in Pensacola Telegraph Company v. Western Union Telegraph Company, 96 U. S., 1.

This court said:

> "The powers thus granted are not confined to the instrumentalities of commerce or the postal service known or in use when the

> Constitution was adopted, *but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances.* They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate at all times and under all circumstances. As they were entrusted to the general government for the use of the nation it is not only the right but the duty of Congress to see to it that intercourse among the States *and the transmission of intelligence are not obstructed or unnecessarily encumbered by state legislation.*"

In Western Union Telegraph Company v. Pendleton, 122 U. S., 347, this Court said (p. 356):

> "*Other commerce deals only with persons or with visible and with tangible things. But the telegraph transports nothing visible and tangible; it carries only ideas, wishes, orders, and intelligence.*"

In the Lottery Cases (188 U. S., 321) one of the questions was whether a lottery ticket was an article of commerce. The lottery slip in one of these cases was only a piece of paper, upon which the man who had bought the chance

wrote some numbers, which in the event of a successful drawing entitled him to a prize. Yet this piece of paper, with merely a description of a few written numbers, made criminal by the laws of state and nation, was held by this court to be an article of commerce and its transportation from Cincinnati, Ohio, to Covington, Kentucky, was held to be a transaction of commerce which Congress under the commerce, clause had the power to prohibit.

For this court to hold that valuable educational matter, issued in printed or even in written form, sold for a consideration, having intrinsic value, and physically transported from state to state, is not an article of commerce because it was bought and sold for educational purposes, and that a policy slip or lottery ticket is such an article of commerce, would be a surprising contradiction.

It is true that in the insurance cases * policies of insurance have been held not to be articles

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* Paul v. Virginia, 8 Wall., 168 (1868); Ducat v. Chicago, 10 Wall., 410 (1870); Liverpool Ins. Co. v. Massachusetts, 10 Wall., 566 (1870); Philadelphia Fire Assn. v. New York, 119 U. S., 110 (1886); Hooper v. California, 155 U. S., 648 (1894); Allgeyer v. Louisiana, 165 U. S., 578 (1896); N. Y. Life Ins. Co. v. Cravens, 178 U. S., 389 (1900); Security Ins. Co. v. Prewitt, 202 U. S., 246.

of commerce, *but this is wholly for the reason that they are mere contracts for the ultimate and possible payment of money.* Indeed, the insurance cases were chiefly rested on the proposition that in any event the transaction of insurance was essentially intrastate and not interstate.

Such point, however, does not rise in this case, for there is a manifest distinction between a policy of insurance, which is the mere evidence of a contract to pay, and valuable educational matter in the form of printed pamphlets or books, having intrinsic value as such. Their value as literary property has been protected by United States copyright. Their value for educational purposes can be measured by the extraordinary success of the International Correspondence School in enrolling over one million of scholars. Their value merely as readable literature would certainly give them intrinsic value. In any aspect the plaintiff's publications, whether bound or unbound, were generically books, and as books a recognized staple of commerce.

To sustain their commercial character it is not necessary to invoke the doctrine of the cases, above cited, which hold that the mere diffusion

of intelligence or sale of information by telegraphic or other communication and not in a concrete form like a book or pamphlet, is within the protection of the commerce clause of the Constitution.

To hold otherwise would result in the curious contradiction that although the plaintiff could, without interference by the state, give its instruction and information by telegraph or telephone, yet, when the instruction or information is reduced to the concrete form of a book or pamphlet, having in itself intrinsic and exchangeable value and therefore having a more tangible and appreciable relation to the current of interstate commerce, it is thereby withdrawn from the protection of the commerce clause of the Constitution. Such a distinction would be untenable.

Shipping newspapers from New York to Texas is a transaction of interstate commerce.

Preston v. Finley, 72 Fed. Rep., 850, 857.

Similarly the shipment of books from one State to another is interstate commerce.

In re Nichols, 48 Fed., 164.
In re White, 43 Fed., 914.
Culberson v. Am. T. & B. Co., 107 Ala., 457.

Anything which can be bought and sold is a subject of commerce and it cannot be reasonably questioned that these educational pamphlets, prepared at so much expense, could be bought and sold like any other commodity.

It was well said by the Circuit Court of Appeals of the Eighth Circuit, in Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. Rep., 1, 17:

> "Importation into one State from another is the indispensable element, the test of interstate commerce, and every negotiation, contract, trade and dealing between citizens of different States, which contemplates and causes such importation, whether it be of goods, persons or *information*, is a transaction of interstate commerce."

If the transaction between the plaintiff and defendant was one of interstate commerce, the unconstitutionality of the Kansas statute is not lessened by the fact that the plaintiff had an agent in Kansas, whose duty it was to solicit contracts, and to collect the consideration for the purchase as paid in instalments, for this Court has repeatedly held that the right to engage in interstate commerce includes as a necessary incident the right to employ agents,

or other representatives to solicit contracts for the purchase of interstate commodities, and the mere fact that such an agent solicits a contract, and collects the price, does not give the state any larger power to burden or restrain such business by license, taxes or police regulations.

Robbins v. Shelby County Taxing Districts, 120 U. S., 489, 491, 493.
Lyng v. Michigan, 135 U. S., 161, 166.
Norfolk & Western R. R. Co. v. Pa., 136 U. S., 114.
Crutcher v. Ky., 141 U. S., 47, 57–59.
Caldwell v. N. C., 187 U. S., 622, 623.

Under these decisions and the agreed statement of facts, it is clear that whatever the plaintiff did in the State of Kansas was an integral part of interstate commerce.

II.

The statutes of Kansas, requiring plaintiff to obtain its "permission" to engage in interstate commerce and burdening the exercise of its constitutional right to do so with license taxes, and fees, and penalizing the plaintiff for engaging in interstate commerce without the "permission" of the state by denying to the plaintiff equality of judicial relief in its courts, are unconstitutional.

While ordinarily and generally a state has the right altogether to exclude foreign corporations or to impose conditions upon their right to do business within the state, yet such general right is so far modified and restricted by the commerce clause of the Constitution that the state cannot exclude any foreign corporation from entering said state to engage in interstate commerce with its citizens.

It was said by Mr. Justice BRADLEY that "in matters of foreign and interstate commerce there are no states" (Stockton vs. Baltimore R. R. Co., 32 Fed. Rep. 9) and therefore all corporations, to the extent that they are engaged in interstate com-

merce, are free from the limitations of state lines and can engage in such interstate commerce throughout the length and breadth of the country without asking the "permission" of the state and with absolute freedom from any direct restriction or burden by the state, whether such restrictions or burdens be considerable or inconsiderable, reasonable or unreasonable, or exercised under its taxing or police powers.

In Pensecola Telegraph v. Western Union, 96 U. S., 1, this court, distinguishing Paul v. Virginia, said:

> "We are aware in Paul v. Virginia, 8 Wallace, 168, this court decided that a state might exclude a corporation of another state from its jurisdiction and that corporations are not within the clause of the Constitution which declares that 'citizens of each state shall be entitled to all privileges, immunities of citizens in the several states'. (Article 4, Section 2). *That was not, however, the case of a corporation engaged in interstate commerce and enough was said by the court to show that if it had been a very different question would have been presented.*"

In Cooper Manufacturing Company v. Ferguson, 113 U. S., 727, an Ohio corporation, made a contract in Colorado with citizens of that state to sell and to deliver certain machinery for an

agreed price. Both the constitution and statutes of Colorado required any foreign corporation as a prerequisite to any right to engage in business in Colorado to file a certificate of incorporation, appoint an agent for service and specify its principal place of business in Colorado. The purchasers, as in the case at bar, refused to pay the sum they had agreed to pay, because the Ohio company had failed to comply with these constitutional and statutory requirements of Colorado. This court overruled the defense and said (p. 734):

> **"So it is clear that the statute cannot be construed to impose upon a foreign corporation limitations of its right to make contracts in the state for carrying on commerce between the states, for that would make the Act an invasion of the exclusive right of Congress to regulate commerce among the several states."**

In the concurring opinion of Mr. Justice MATTHEWS and Mr. Justice BLATCHFORD it was said:

> "In the present case the construction claimed for the constitution of Colorado and the statute of that state passed in execution of it cannot be extended to prevent the plaintiff in error, a corporation of another state, from transacting any business in

> Colorado which of itself is commerce. The transaction in question was clearly of that character. It was the making of a contract in Colorado to manufacture certain machinery in Ohio to be there delivered for transportation to the purchasers in Colorado. *That was commerce; and to prohibit it, except upon conditions, is to regulate commerce between Colorado and Ohio, which is within the exclusive province of Congress.*"

In Norfolk & Western Railroad Co. v. Pennsylvania, 136 U. S., 114, 118, this court said:

> " It is well settled by numerous decisions of this court that a state cannot under the guise of a license tax exclude from its jurisdiction a foreign corporation engaged in interstate commerce or impose any burdens upon such commerce within its limits."

In Crutcher v. Kentucky, 141 U. S., 47, 57–59, the Legislature of Kentucky prohibited any agent of a foreign express company from doing business in the state unless the express company first filed with the Auditor of the state a statement of its articles of association and evidence that it had $150,000 invested in some safe dividend paying stock and had paid to the Auditor of the state fees to the amount of $20. Crutcher was convicted and fined for engaging in business as the agent of a foreign express company with-

out complying with these provisions of the Kentucky statute. This court, in reversing the conviction, said:

> "If a partnership firm of individuals should undertake to carry on the business of interstate commerce between Kentucky and other states, it would not be within the province of the state legislature *to enact conditions under which they could carry on their business or to require them to take out a license therefor. To carry on interstate commerce is not a privilege or franchise granted by the state. It is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States*; and the accession of mere corporate facilities as a matter of convenience in carrying on their business cannot have the effect of depriving them of such right unless Congress should see fit to interpose some contrary regulation on the subject."

Still more in point, because of the closer similarity in its facts, is Caldwell v. N. C., 187 U. S., 622, 623. In that case a city ordinance of the city of Greensboro prohibited every person from engaging in the business of selling or delivering picture frames or pictures, unless he first paid a license tax of $10 for each year. A foreign corporation without paying this license tax, obtained such contracts through its solicitors

or drummers in the city in question. It shipped the pictures and frames from its place of business in Chicago to Greensboro. This court held the ordinance invalid, quoting with approval the following statement:

> "It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers, those of Tennessee and those of other States, that are all taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce or that which is carried on solely within the State."

In Brennan v. Titusville, 153 U. S., 289, an ordinance of the city of Titusville required that all persons who canvassed or solicited orders for merchandise should procure from the Mayor a license to transact said business, and pay to the treasurer certain sums. Brennan was the agent of an Illinois manufacturer of picture frames and portraits and solicited orders for his products in Titusville, Pa., by showing samples of the merchandise. *The ordinance was adjudged by this Court unconstitutional and it further held that it made no difference that the tax in question was an exercise of the police power and not of the*

taxing power, for, viewed either as taxation or as a police regulation, it was equally an unconstitutional burden upon interstate commerce.

See also—

Robbins vs. Shelby Taxing District, 120 U. S., 489.
Asher vs. Texas, 128 U. S., 129.
Stoutenburgh vs. Hennick, 129 U. S., 142.
Pembina Mining Co. vs. Pa., 128 U. S., 190.

To multiply citations upon this point would seem superfluous. The apparent exceptions to the rule consist wholly of cases where the right of the foreign corporation to do the thing, which was the subject matter of controversy, was not a right created and protected by the Constitution of the United States, but one subject wholly to the discretion and permission of the state. Thus the "insurance cases" were based upon the proposition that the transactions were *not* those of interstate commerce (*ante, p. 26*).

Similarly, too, there are cases like that of Diamond Glue Co. v. U. S. Glue Co., 187 U. S., 611, where the business which the foreign corporation attempted to do in the state without its

its permission was an intra-state and not interstate, although commercial in character.

Clearly the case at bar is not within any of these exceptions. The plaintiff transacted no business in Kansas, except that of interstate commerce, and the burden sought to be placed by the Kansas statutes was clearly not only a burden but a *conditional prohibition* of the shipment of merchandise from Pennsylvania to Kansas and the solicitation of orders therefor.

The relative weight of the burden upon interstate commerce is wholly unimportant, and it equally offends the Constitution whether it be petty and insignificant, or weighty and substantial in its effects. Such burdens are as to their prohibitory effect relative. A small license fee would destroy one business and affect another but little. A requirement as to publicity, to which a small foreign corporation might be indifferent, may be prohibitory to a large corporation with world-wide connections. The law will not measure these relative burdens. All are void.

Moreover, the purpose of the restriction, whether enacted for revenue or as a police regulation, is equally unimportant. In the absence

of congressional action, the Constitution provides that interstate commerce be *free*. Therefore, however salutary the police regulations might otherwise be, and however insignificant the tax on interstate commerce, this Court will not weigh the relative burden or measure its consequences, but has held *any* burden or condition void.

If there be any exception to this, it has been such *purely local* police regulations as refer strictly to the health or morals of the community, such as those prohibiting the importation of diseased meats or high explosives, and such burdens have been justified on the ground that such commodities, when they affect the health and safety of human life, are not so commercial in character as to be beyond the local police power.

With this exception, all burdens, great or small, reasonable or unreasonable, upon interstate commerce, are invalid and this for the reason that, however insignificant their consequence, *they strike at the exclusive and paramount authority of the Federal Government.* They in effect challenge the principle laid down by this Court, in Crutcher v. Kentucky,

141 U. S., 47, 57, that "to carry on interstate commerce is not a *franchise or privilege* granted by the state, *it is a right* which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States."

Measured by this great rule, the Kansas statutes, so far as they affect foreign corporations engaged in interstate commerce, must be held to be invalid. The requirements of these statutes may not in themselves be unreasonable, but their fatal defect is that they exercise a power which belongs *exclusively* to Congress. They mistakenly assume that the right to engage in such commerce is subject to the "permission" of the state. For Section 1260, as applied by the Supreme Court of Kansas to the subject matter of this suit, provides in effect that this Pennsylvania corporation, before it could engage in interstate commerce with the citizens of Kansas, must first secure the "permission" of that state.

Upon this assumed permissive right to engage in interstate commerce, the remaining requirements of the statutes are based. They are all part of one system and interdependent, and Section 1283, under which the de-

fendant in this suit admittedly declined to pay a debt which he had promised to pay to the plaintiff is based upon the fundamental and erroneous assumption of the preceding section that compliance with its conditions is a necessary preliminary to any "permission" to engage in interstate commerce in the State of Kansas.

To secure such "permission", the plaintiff is required to file a certified copy of its charter and with other information to give a detailed statement of its assets and liabilities, and such other information as the Charter Board may require in order to determine the solvency of the corporation.

Thus, unless the plaintiff could satisfy the Charter Board that it is a solvent corporation "permission" to engage in interstate commerce would be refused; and under Section 1261, to secure such "permission" the planitiff is required to pay a charter fee of $25 and to pay further onerous taxes in proportion to its capital stock without respect to the amount thereof, if any, that is employed in its business in Kansas; and it was further required to stipulate that service of process in any suit against it

upon the Secretary of State of Kansas should be valid process.

In Section 1263 such permission is not granted until after the Charter Board has carefully investigated the application for such "permission," and it is provided that unless the Charter Board shall conclude that the applicants for "permission . . . to engage in business as a foreign corporation in this State" are acting in good faith and are solvent, the permission shall be withheld.

Section 1283 provides that "it shall be the duty of the President, Secretary or managing officer of each corporation doing business in this State, except banking, insurance and railroad corporations, annually, on or before the first day of August, to prepare and deliver to the Secretary of State a complete statement of the condition of such corporation on the 30th day of June next preceding." Such statement to contain among other information "a complete and detailed statement of the assets and liabilities of the corporation," and a full and complete list of the stockholders with the Post Office address of each and the number of shares held and paid for by each. It was then provided that failure to file such

statement shall work *a forfeiture of its rights or authority to do business in this State*, and that

> "No action shall be maintained or recovery had in any of the courts of this State, by any corporation doing business in this State, *without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made.*"

This clause attempts to shut the doors of the Kansas courts upon the foreign corporation, which engages in interstate commerce without obtaining the "permission" of the State of Kansas. The clause is so linked with the preceding sections, of which we have quoted the substance, that as a matter of practical administration, they are clearly inseparable. To enable this company to maintain a suit in the Kansas courts "it must first obtain the certificate of the Secretary of State that statements provided for in this section have been properly made". If the only statements that the plaintiff would be obliged to make to get his "certificate" were the statements required under Section 1283, such requirement would nevertheless invalidate the clause as an unconstitutional burden upon interstate commerce, for it requires the plaintiff as a condition of getting his certifi-

cate to disclose to the Secretary of State a complete and detailed statement of the assets and liabilities of his company, although the greater part of said business may be done outside of the State of Kansas and have no legitimate connection with that state. That such a requirement might in many cases be not only a burden but a prohibition upon interstate commerce is clear, for some corporations might prefer to forego the little business that they could secure in Kansas rather than make public the intimate details of its business in other states and countries. The question however is not whether this requirement would necessarily drive a foreign corporation from the borders of Kansas, but whether it burdens it in engaging in interstate commerce. Of this there can be no reasonable question.

But Section 1283 is so inseparably linked with the other statutory requirements that the burden is much greater than merely filing these annual statements.

The Secretary of State would not give to a foreign corporation the certificate in question merely upon compliance with the requirements of section 1283. He would require, especially since the decision of the Supreme Court of Kansas in

this case, that a foreign corporation should comply with all of the requirements of the Kansas statutes as to foreign corporations before he would recognize it as a corporation lawfully "doing business" in Kansas and he would presumably withhold his certificate, if the corporation had not applied to the Charter Board for "permission" to do business in Kansas, and had not paid the charter fee and the very considerable tax upon its capital stock.

Undoubtedly the State of Kansas is generally competent to limit the jurisdiction of its courts and to regulate their procedure, and such limitations and procedure may and often will operate as an indirect burden upon interstate commerce. But the indirect effect upon contracts of all statutes with reference to judicial procedure cannot clothe a state with power to so limit its judicial power as to directly burden or destroy interstate commerce. It doubtless has control over its courts, just as it has over its highways and over its policing system, but it cannot directly and intentionally burden interstate commerce by denying equal facilities to its courts to those engaged in interstate commerce any more than it could deny free access to its

highways or the protection of its police regulations. Otherwise the state could, by withholding its own facilities for the protection of life and property and the enforcement of contracts, not merely regulate but effectually destroy interstate commerce, for foreign corporations would not engage in interstate commerce, if the states were competent to close, except upon terms which each imposed, the highways or the doors of the courts upon such corporations.

The most effectual method for a state to prohibit interstate commerce would be to forbid the making of contracts with reference thereto, for commerce could not well be conducted without contracts and contracting parties. Indeed the most effective regulations of commerce are the statutory prohibitions of contracts with reference thereto, such as the Sherman Anti-Trust Law. There can be no practical distinction between the prohibition of the making of a contract and the declaration that such a contract shall be under specified conditions void and unenforceable in law. In each case the contract is effectually forbidden, and in each case the commerce which results from such contract is effectually restrained. When therefore the Kansas statutes

state that a foreign corporation engaged in interstate commerce cannot as to a transaction in such commerce enforce its claims in the courts of Kansas, it in part, and in many cases altogether, prohibits the making of such contracts and therefore the carrying on of such commerce.

The judicial enforcement of a contract is as much a part of the contract as vital motion is a part of vital existence. For the law to hold that a man can make a contract but cannot enforce it in the courts would be to imitate the folly of the foolish mother, who gave permission to her daughter to go out to swim, provided that she did not go near the water. How can it be argued that while Kansas could not prohibit the making of a contract in interstate commerce it could destroy its very life?

It may, however, be argued that the State of Kansas only withholds judicial relief in its own courts, and that the foreign corporation may still pursue its remedy in the courts of the United States. In many cases this would not be true, but in the case in suit no remedy is given in the courts of the United States, the amount in controversy be-

ing under the jurisdictional limit. While this company is engaged in a business of large dimensions, and has its contracts with hundreds of thousands of persons, most of its contracts are in amount under the federal jurisdictional limit, and therefore none of them could be prosecuted in any court unless they could be prosecuted in the state courts.

The great purpose of the Constitution was that interstate commerce should be absolutely free, save as regulated by the federal Government.

It matters not whether an attempted regulation of such commerce by the state is through its executive or judiciary, for the state may not "*by any of its agencies, legislative, executive or judicial*", impair or destroy a right under the Constitution of the United States.

San Diego Land Co. v. National City, 174 U. S., 739, 753;
C. B. R. R. Co. v. Chicago, 166 U. S., 226, 234.

A judicial regulation, therefore, which directly burdens interstate commerce, is just as invalid as an act of the executive, especially where, as here, the interference with interstate commerce, which is sought to be effected through the

agency of the State courts, results from an act of the legislative department of the State government. If it were not so, then it would logically follow that the State of Kansas could pass a law denying to all foreign corporations, which engage in interstate commerce in the State of Kansas, *any* opportunity to sue in its Courts. Could interstate commerce be thus restricted and those who take part in it virtually penalized? Or, the legislature of Kansas might pass a law that no foreign corporation, which engaged in interstate commerce in Kansas, could sue in its Courts, unless it first waived all its rights under the Constitution of the United States, whether arising under the commerce clause or under the Fourteenth Amendment. Is it conceivable that this Court would sustain such indirect nullification of the supreme law of the land?

It is true that in Security Ins. Co. v. Prewitt, 202 U. S., 246, this Court finally held that a State could exclude a foreign *insurance* corporation from engaging in business within its borders, unless it waived its constitutional right to remove any suit to the Federal Court, but, as previously stated (*ante*, p. 26) this was expressly based upon

the fact that a foreign insurance company, when it engages in business in another State, does not exercise any right under the Constitution of the United States, as interstate insurance is not interstate commerce. That this ruling would not apply to a case where a federal right was sought to be indirectly nullified through a destruction of judicial relief, was ruled by this Court in *Ex parte* Young, 209 U. S., 123, where Mr. Justice PECKHAM said:

> **"A law, which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is also unconstitutional."**

But even if the exclusive power conferred by the commerce clause did not imply this necessary limitation upon a law of this character, the Fourteenth Amendment clearly does.

The Kansas statute clearly operates to deny to the plaintiff the full and equal protection of the laws. Clearly the plaintiff is within its constitutional rights in declining to comply with the requirements of the Kansas statutes, which so far as they affect interstate commerce are void. It thus follows that, although it has only exer-

cised its constitutional *right* in the State of Kansas to engage in interstate commerce without asking the "permission" of the Charter Board of Kansas, it is for this reason alone denied the opportunity in the Kansas courts to enforce a contract, which is otherwise concededly valid, although every other citizen of Kansas can enforce such a contract in its courts.

This denial of the equal protection of the law is, under the Kansas statute, still more glaring and offensive in the case at bar because of its unequal effect upon the two contracting parties. The Kansas statutes does not provide that the contract between the plaintiff and defendant is absolutely void as against both parties. It simply provides that if the plaintiff shall choose to exercise his constitutional right to engage in interstate commerce, it cannot maintain any action to enforce the contract, but it permits the other contracting party to enforce the contract against the plaintiff.

The precise question as to how far a denial of judicial relief to a party engaged in interstate commerce is a burden upon such commerce was considered in this court in Cooper Manufacturing Company v. Ferguson, 113 U. S., 727, 736,

although the majority of the Court did not find it necessary to rest its decision upon that ground.

The question has, however, arisen in the highest Courts of the various States and with the exception of the Supreme Court of Kansas it has been uniformly held that such a law is unconstitutional. The following are some of the cases:

Underwood Typewriter Co. v. Pigott, 60 W. Va., 532; 55 S. E., 664.

Woessner v. Cottam & Co. 47 S. W., 678.

Lane Co. v. City Electric Co., 72 S. W., 425.

Texas Railway Co. v. Davis, 54 S. W., 381.

Coweta Fertilizer Co. v. Brown, 163 Fed. Rep., 162, 168.

Greek-American Sponge Co. v. Drug Co., 124 Wisc., 469, 476.

Haldy v. Tomoor-Haldy Co., 4 Ohio Decs., 118.

Hargraves Mills v. Harden, 25 N. Y. Misc., 665.

Coit & Co. v. Sutton, 102 Mich., 324.

Gunn v. Sewing Mach. Co., 57 Ark., 24.

Hovey's Estate, 198 Pa., 385.

Savage v. Atlanta Home Ins. Co., 66 N. Y. Suppl., 1105; 55 App. Div. 20.

This court has indirectly ruled upon the question in holding that the right to contract within a state implies necessarily the right to use the courts of the state to enforce the contract.

In Von Hoffman v. City of Quincy, 4 Wallace, 535, 552, this court said:

> **"Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment upon the will of the individual. The ideas of validity and remedy are inseparable and both are parts of the obligation which is guaranteed by the Constitution against invasion."**

This court has also held that while states may change their statutes of limitation without impairing the contract clause of the constitution, they cannot do so without giving a reasonable opportunity to every one who has a contractual right to enforce his claim by suit at law, and such has been the ruling of all other appellate courts in which the question has arisen.

By similar reasoning, while the State of Kansas is competent to regulate the procedure of its courts it cannot so regulate them as to discriminate against those who are engaged in

interstate commerce by denying to them judicial remedies on terms of absolute equality with other litigants.

If this were not so, the supremacy of the Federal Government with reference to interstate commerce would not be as clear and effective as it has hitherto been supposed to be, but it would be subject to the material and destructive regulation, which each state could make, by only opening the doors of its courts to those who are willing to engage in interstate commerce upon such terms as the state might see fit to impose.

This would be true if the statute simply closed the courts to those engaged in interstate commerce, but it is doubly true when it thus closes access to the courts of justice, unless the person or corporation, who is engaged in interstate commerce, shall first comply with conditions, which in themselves are unconstitutional burdens upon such commerce. The Constitution of the United States cannot be thus nullified by statutory indirection.

To hold otherwise would result in this indefensible contradiction, that while no state, by any use of its taxing or police powers, can

directly regulate interstate commerce, yet it could indirectly, by *penalizing* those who attempt to engage in it without its "permission" by destroying that enforcibility in a court of law which is the very life of a contract.

This Kansas statute, in denying judicial relief in its courts to any foreign corporation engaged in interstate commerce in effect penalizes the corporation for its failure or refusal to submit to statutory requirements which are otherwise plainly unconstitutional. The Act therefore operates not merely as a penalty but as a discriminatory penalty.

Can it be possible that such a law is valid while all other state laws which discriminate against interstate commerce are invalid?

It has been repeatedly held that a state cannot discriminate against citizens or products of other states. (Railroad v. Husen, 95 U. S., 465; Minnesota v. Barber, 136 U. S., 313; Brimmer v. Rebman, 138 U. S., 78; Voight v. Wright, 141 U. S., 62; Tiernan v. Rinker, 102 U. S., 123; Guy v. Baltimore, 100 U. S., 434; Welton v. Missouri, 91 U. S., 275; Walling v. Michigan, 116 U. S., 446);

nor impose a tax on inter-state commerce either by a tax laid on the transportation of the subjects of that commerce (Case of State Freight Tax, 15 Wall. 232, 279; Telegraph Co. v. Texas, 105 U. S., 460, 465; People v. Compagnie etc. Transatlantique, 107 U. S., 59) or by a tax on the receipts derived from that transportation or upon the capital stock of the carrier (Philadelphia S. S. Co. v. Pennsylvania, 122 U. S., 326; Western Union v. Alabama, 132 U. S., 472; Pensacola Tel. Co. v. Western U. Tel. Co., 96 U. S., 1; Ratterman v. Western Union Tel. Co., 127 U. S., 411; Western Union v. Pennsylvania, 128 U. S., 39; *Id.* v. Mass., 125 U. S., 530; Fargo v. Michigan, 121 U. S., 230; California v. Central Pacific, 127 U. S., 1; Gloucester Ferry Co. v. Pa., 114 U. S., 196), or by means of a license fee on the privilege or occupation of engaging in interstate commerce (Robbins v. Shelby Co., 120 U. S., 489; Corson v. Maryland, 120 U. S., 502; Leloup v. Mobile, 127 U. S., 640; Harman v. Chicago, 147 U. S., 396; Brennan v. Titusville, 153 U. S., 289; Moran v. New Orleans, 112 U. S., 69; Asher v. Texas, 128 U. S., 129; McCall v. California, 136 U. S., 104; N. & W.

R. Co. v. Pa., 136 U. S., 114; Crutcher v. Ky., 141 U. S., 47; Henderson v. Mayor, 92 U. S., 259; Pickard v. Pullman Co., 117 U. S., 34; Webber v. Va., 103 U. S., 344; Stoutenburgh v. Hennick, 129 U. S., 141); nor can a State in any way attempt to regulate inter-state commerce by imposing burdensome conditions under which it may be conducted whether by fixing rates (Wabash R. Co. v. Illinois, 118 U. S., 557; Covington Bridge Co. v. Ky., 154 U. S., 204), or preventing the introduction or certain articles of commerce (Bowman v. Chicago Ry. Co., 125 U. S., 465; Leisy v. Hardin, 135 U. S., 100); or by requiring telegraphic messages to be sent in the order received and delivered by messengers within one mile of the office (Western Union v. Pendleton, 122 U. S., 347); or by requiring common carriers to give equal passenger accomodations without distinction on account of race or color (Hall v. DeCuir, 95 U. S., 485).

Are all these forms of discriminatory legislation invalid but may the state accomplish the same end by a still more offensive discrimination which also offends the great and salutary principle of the Fourteenth Amendment as to the equal protection of the laws?

In this connection it must be remembered that while a foreign corporation (except when engaged in interstate commerce) has no right to do business in another state without its permission, yet by a doctrine of comity (which is not a mere matter of courtesy or good will to be extended or withheld by the courts of discretion but a positive rule of law) a foreign corporation may always sue in the courts of another country. This foreign corporation therefore has a *prima facie* right by the comity of states and nations to sue in the courts of Kansas, and while the State of Kansas may unquestionably, as a question of general power, expressly limit such right, it cannot do so when the inevitable effect of such limitation is an invasion of the exclusive power of the Federal Government to regulate interstate commerce.

The invalidity of any attempt of a state to destroy a federal right by a threatened denial of judicial relief in the Courts of the state is clearly established by this Court in *Ex parte* Young, 209 U. S., 123, and Cotting vs. Stockyards, 183 U. S., 79, where it was held that any attempt by oppressive penalties to deter a litigant from asserting his constitutional rights in a judicial tribunal is unconstitutional.

That a substantial portion of plaintiff's business is conducted through the United States mails does not lessen its character as interstate commerce, for that commerce can be conducted by any instrumentality of civilization (*ante*, p. 25). Indeed a very considerable part of such commerce is conducted through the mails, and the medium of transmission therefore only affects the question at bar in so far as it throws about the plaintiff the additional protection of that clause of the Constitution which gives to the United States exclusive power over the mails. Indeed this governmental instrumentality is even more within the exclusive power of the government, which creates and operates it, than the invisible channels of interstate trade, over which the power of the Federal Government is less direct. To the extent that this plaintiff conducts its business through the mails, it is not important whether the subject matter, which is transmitted from Pennsylvania to Kansas, was an article of commerce or not, or whether its mere transmission was strictly interstate commerce, for the State of Kansas was powerless to invade the exclusive power of the Federal Government to determine what should

and what should not be transported through the mails.

See

Ex parte Jackson, 96 U. S., 727;
In re Rapier, 143 U. S., 110;
Horner v. United States (No. 1), 143 U. S., 207.

In the Rapier case, it was said:

> "The states before the Union was formed could establish post-offices and post-roads, and in so doing could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post-offices and post-roads was surrendered to the Congress, it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective."

If therefore this plaintiff has used the beneficent instrumentality of the mails to communicate with the citizens of Kansas for educational purposes, such intercommunication is even further removed from state interference than by the commerce clause. Under the latter clause, it is within Marshall's ample definition of "commercial intercourse," while under the post roads clause of the Constitution, it is a part of the postal service, over which the federal government has exclusive control.

To the plaintiff's business, therefore, viewed either as the interstate shipment of commercial commodities under the commerce clause of the Constitution or as communication through the United States mails as a federal instrumentality, the words of Mr. Justice BRADLEY, in Stockton v. Baltimore R. R. Co., 32 Fed. Rep., p. 9, are applicable:

> "The power of Congress is supreme over the whole subject, unimpeded and unembarrassed by state lines or state laws, and in this matter the country is one and the work to be accomplished is national. State interests, state jealousies and state prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no states."

Respectfully submitted,

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JAMES M. BECK,

Counsel for Plaintiff in Error.

APPENDIX.

Kansas General Statutes of 1901.

SECTION 1260.—APPLICATION FOR CHARTER.

Persons seeking to form a private corporation under any of the laws of this state, or any corporation organized under the laws of any other state, territory or foreign country, and seeking to do business in this state, shall make application to said board upon blanks supplied by the secretary of state, for permission to organize a corporation or to engage in business as a foreign corporation in this state. Such application shall set forth—

If a corporation organized under the laws of another state, territory, or foreign country, and seeking to do business in this state: (1) A certified copy of its charter or articles of incorporation. (2) The place where its principal office or place of business is to be located. (3) The full nature and character of the business in which it proposes to engage. (4) The names and addresses of the officers, trustees or directors and stockholders of

the corporation. (5) A detailed statement of the assets and liabilities of said corporation, and such other information as the board may require in order to determine the solvency of the corporation. Such statement shall be subscribed and sworn to by the president and secretary or by the managing officer of said corporation.

SECTION 1261.—FEES; SERVICE OF PROCESS.

Each application for permission to organize a corporation, or to engage in business in this state as a foreign corporation, shall be accompanied by a fee of twenty-five dollars, to be known as an application fee; and in all cases where such applications are made by corporations organized under the laws of any other state, territory, or foreign country, and as a condition precedent to obtaining authority to transact business in this state, said corporation shall file in the office of the secretary of state, its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in this state in which the cause of action arose, or in which the plaintiff may reside by the service of process on the secretary of state, and stipu-

lating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or chief officer of such corporation, and shall be executed by the president and secretary of the company, authenticated by the seal of the corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the said secretary and president to execute the same. Every foreign corporation now doing business in this state shall, within thirty days from the taking effect of this act, file with the secretary of state its written consent as above specified.

SECTION 1263.—MEETINGS OF BOARD; INQUIRY.

The charter board shall hold at least one meeting each month, . . . In passing upon the application of a foreign corporation, the board shall also make special inquiry with reference to the solvency of such corporation, and for this purpose may require such information and evidence as they may deem proper. If they shall determine that such corporation is properly organized in accordance with the laws of the

state, territory or foreign country under which it is incorporated, that its capital is unimpaired, and that it is organized for a purpose for which a domestic corporation may be organized in this state, the application shall be granted, and the secretary of the board shall issue a certificate setting forth the fact that the application has been granted and that such foreign corporation may engage in business in this state as hereinafter provided.

SECTION 1264.—CHARTER FEE.

Each corporation which has received authority from the charter board to organize shall, before filing its charter with the secretary of state, as provided by law, pay to the state treasurer of Kansas, for the benefit of the permanent school fund, a charter fee of one-tenth of one per cent. of its authorized capital upon the first one hundred thousand dollars of its capital stock, or any part thereof; and upon the next four hundred thousand dollars, or any part thereof, one-twentieth of one per cent.; and for each million or major part thereof over and above the sum of five hundred thousand dollars, two hundred dollars. The treasurer shall execute his receipt

therefor in triplicate, one of which receipts shall be delivered to the party making the payment, one to the auditor of state, and the other shall be indorsed upon the charter; and it shall be unlawful for the secretary of state to file or accept for filing any charter or to issue a certified copy of any charter of any corporation required by the provisions of this act to pay a charter fee which does not have such receipt for the proper fee indorsed thereon by the state treasurer. * * * All the provisions of this act, including the payment of the fees herein provided, shall apply to foreign corporations seeking to do business in this state, except that, in lieu of their charter, they shall file with the secretary of state a certified copy of their charter, executed by the proper officer of the state, territory or foreign country under whose laws they are incorporated. . . .

SECTION 1283.—ANNUAL STATEMENTS; PENALTIES; TRANSFER OF STOCK; FORFEITURE; ACTION NOT MAINTAINED.

It shall be the duty of the president and secretary or of the managing officer of each corporation for profit doing business in this state, except banking, insurance and railroad corpora-

tions, annually, on or before the first day of August, to prepare and deliver to the secretary of state a complete detailed statement of the condition of such corporation on the 30th day of June next preceding. Such statement shall set forth and exhibit the following, namely:

FIRST. The authorized capital stock.

SECOND. The paid up capital stock.

THIRD. The par value and the market value per share of said stock.

FOURTH. A complete and detailed statement of the assets and liabilities of the corporation.

FIFTH. A full and complete list of the stockholders, with the post office address of each, and the number of shares held and paid for by each.

SIXTH. The names and post office addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held. . . .

Failure to file such statement by any corporation doing business in this state and not organized under the laws of this state shall work a forfeiture of its right or authority to do business in this state, and the charter board may at any time declare such forfeiture, and shall forthwith

publish such declaration in the official state paper. . . .

No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the secretary of state that statements provided for in this section have been properly made."

INTERNATIONAL TEXTBOOK COMPANY *v.* PIGG.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 15. Argued April 21, 1909.—Decided April 4, 1910.

The reasonable construction of a state statute relating to foreign corporations doing business within the State does not include the doing of a single act or the making of a single contract, but does include a continuous series of acts by an agent continuously within the State. *Cooper Manufacturing Company* v. *Ferguson*, 113 U. S. 727.

A foreign corporation engaged in teaching by correspondence and which continuously has an agent in a State securing scholars and receiving and forwarding the money obtained from them, is doing business in the State; and such a corporation does business in Kansas within the meaning of § 1283 of the general statutes of that State of 1901.

Commerce is more than traffic; it is intercourse, and the transmission of intelligence among the States cannot be obstructed or unnecessarily encumbered by state legislation. *Gibbons* v. *Ogden*, 9 Wheat. 1; *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1.

Intercourse or communication between persons in different States through the mails and otherwise, and relating to matters of regular continuous business, such as teaching by correspondence, and the making of contracts relating to the transportation thereof, is commerce among the States within the commerce clause of the Federal Constitution.

A state statute which makes it a condition precedent to a foreign corporation engaging in a legitimate branch of interstate commerce to obtain what practically amounts to a license to transact such business is a burden and restriction upon interstate commerce and as such is unconstitutional under the commerce clause of the Federal Constitution; and so held as to the requirements of § 1283, General Laws of Kansas of 1901, when applied to a foreign corporation carrying on the business of teaching persons in that State by correspondence conducted from the State in which it is organized.

Quære how far a foreign corporation carrying on business in a State may claim equality of treatment with individuals in respect to the right to sue and defend in the courts of that State; but where a condition precedent to a foreign corporation doing business at all in a State is unconstitutional, the further condition that it cannot

maintain any action in the courts of the State until it has complied with such unconstitutional condition is also stricken down as being inseparable therefrom.

Where a statute is unconstitutional in part the whole statute must be deemed invalid except as to such parts as are so disconnected with the general scope that they can be separably enforced; and so held as to the provisions in § 1283 of the General Laws of Kansas of 1901 against a foreign corporation maintaining any action until it has complied with another provision as to filing a detailed statement which is unconstitutional as to foreign corporations engaged in interstate commerce.

76 Kansas, 328, reversed.

THE facts, which involve the constitutionality of § 1283 of the General Statutes of Kansas of 1901, are stated in the opinion.

Mr. James M. Beck, with whom *Mr. Seth T. McCormick* and *Mr. David C. Harrington* were on the brief, for plaintiff in error:

The contract between the plaintiff and the defendant for the shipment by the plaintiff from Scranton, Pennsylvania, to the defendant in Topeka, Kansas, of printed and documentary merchandise for a pecuniary consideration, was a transaction of interstate commerce. *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512; *Swift* v. *United States*, 196 U. S. 375, 398.

Plaintiff's business is essentially and practically that of compiling, printing, selling and shipping educational publications. As such it is one of the greatest, if not the greatest, educational publication house in the world.

It was formed in October, 1891, and it now has $6,000,000 of paid up capital; 2,800 employees, including an instruction staff of 400 trained teachers; 200 courses of study; its pamphlets and text-books are protected by 5,700 copyrights; it has three home office buildings, of seven acres floor space, and its annual expenditures include $100,000 for postage, $350,000 for printing and $250,000 for preparation and revision of courses. It has enrolled to April 1, 1909, over 1,100,000 purchasers of its educational literature. Its printing establish-

ment issues over 25,000,000 separate pieces of printed matter each year. In the first fifteen years of its existence, its receipts were over $28,000,000.

The case presents every element of a transaction of interstate commerce. There is a vendor and a vendee, a thing bought and a thing sold, a price paid and merchandise delivered. Such merchandise is physically delivered by the vendor directly to the vendee and such delivery is effected, as in the case under consideration, by a continuous and unbroken shipment from a destination in one State to a destination in another, forming "a current of commerce among the States." *Swift* v. *United States,* 196 U. S. 375, 399.

Even if the "instruction papers" were not regarded in common with all other educational publications as printed merchandise but simply as printed information of a peculiar or special character it would nevertheless be within the commerce clause of the Constitution. To sell information in a concrete and tangible form, as in a printed pamphlet, is as much a commercial transaction as to sell a bushel of wheat or a pound of iron. *Gibbons* v. *Ogden,* 9 Wheat. 1; and see Mr. Justice Johnson's concurring opinion in *Gibbons* v. *Ogden,* p. 222; *Passenger Cases,* 7 How. 282; *Covington Bridge Company* v. *Kentucky,* 154 U. S. 204, 218. Indeed, the mere transmission of intelligence or information is commerce, even without regard to its strictly commercial purpose. *Pensacola Tel. Co.* v. *Western Un. Tel. Co.,* 96 U. S. 1; *West. Un. Tel. Co.* v. *Pendleton,* 122 U. S. 347; *Lottery Cases,* 188 U. S. 321. While policies of insurance have been held not to be articles of commerce, this is wholly for the reason that they are mere contracts for the ultimate and possible payment of money.

Shipping newspapers from New York to Texas is a transaction of interstate commerce, *Preston* v. *Finley,* 27 Fed. Rep. 850, 857; also shipment of books from one State to another. *In re Nichols,* 48 Fed. Rep. 164; *In re White,* 43 Fed. Rep. 914; *Culberson* v. *Am. T. & B. Co.,* 107 Alabama, 457.

Anything which can be bought and sold is a subject of commerce and it cannot be reasonably questioned that these educational pamphlets, prepared at so much expense, could be bought and sold like any other commodity. *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. Rep. 1, 17.

The right to engage in interstate commerce includes the right to employ representatives to solicit contracts for the purchase of interstate commodities, and the mere fact that such an agent solicits a contract, and collects the price, does not give the State any larger power to burden or restrain such business by license taxes or police regulations. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, 491, 493; *Lyng* v. *Michigan*, 135 U. S. 161, 166; *Norfolk & Western R. R. Co.* v. *Pennsylvania*, 136 U. S. 114; *Crutcher* v. *Kentucky*, 141 U. S. 47, 57–59; *Caldwell* v. *North Carolina*, 187 U. S. 622, 623.

The statutes of Kansas, requiring plaintiff to obtain its "permission" to engage in interstate commerce and burdening the exercise of its constitutional right to do so with license taxes, and fees, and penalizing the plaintiff for engaging in interstate commerce without the "permission" of the State by denying to the plaintiff equality of judicial relief in its courts, are unconstitutional.

The right of a State altogether to exclude foreign corporations or to impose conditions upon their right to do business within the State, is so far modified and restricted by the commerce clause of the Constitution that the State cannot exclude any foreign corporation from entering said State to engage in interstate commerce with its citizens. *Stockton* v. *Balt. R. R. Co.*, 32 Fed. Rep. 9; *Pensacola Tel. Co.* v. *Western Un. Tel. Co.*, 96 U. S. 1; *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727; *Norfolk & Western R. R. Co.* v. *Pennsylvania*, 136 U. S. 114, 118; *Crutcher* v. *Kentucky*, 141 U. S. 47, 57; *Caldwell* v. *North Carolina*, 187 U. S. 622; *Brennan* v. *Titusville*, 153 U. S. 289. See also *Robbins* v. *Shelby Taxing District*, 120 U. S. 489; *Asher* v. *Texas*, 128 U. S. 129; *Stoutenburgh* v.

Hennick, 129 U. S. 142; *Pembina Mining Co.* v. *Pennsylvania*, 128 U. S. 190.

In the absence of congressional action, the Constitution provides that interstate commerce be free. This rule applies no matter how salutary the police regulations might otherwise be, or however insignificant the tax. Any burden or condition is void except such purely local police regulations as refer strictly to the health or morals of the community.

The requirements of §§ 1260 and 1283 may not in themselves be unreasonable, but their fatal defect is that they exercise a power which belongs exclusively to Congress. Section 1283 is so inseparably linked with the other statutory requirements that the burden is much greater than merely filing these annual statements.

When the Kansas statutes state that a foreign corporation engaged in interstate commerce cannot as to a transaction in such commerce enforce its claims in the courts of Kansas, it in part, and in many cases altogether, prohibits the making of such contracts and therefore the carrying on of such commerce.

The judicial enforcement of a contract is as much a part of the contract as vital motion is a part of vital existence. It cannot be argued that while Kansas could not prohibit the making of a contract in interstate commerce it could destroy its very life.

It matters not whether an attempted regulation of such commerce by the State is through its executive or judiciary, for the State may not "by any of its agencies, legislative, executive or judicial," impair or destroy a right under the Constitution of the United States. *San Diego Land Co.* v. *National City*, 174 U. S. 739, 753; *C., B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 234.

A judicial regulation which directly burdens interstate commerce, is as invalid as an act of the executive. *Security Ins. Co.* v. *Prewitt*, 202 U. S. 246, distinguished, as not applying to a case where a Federal right was sought to be indirectly

nullified through a destruction of judicial relief. *Ex parte Young*, 209 U. S. 123.

The Kansas statute clearly operates to deny to the plaintiff the full and equal protection of the laws. The plaintiff is within its constitutional rights in declining to comply with the requirements thereof. *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727, 736. With the exception of the Supreme Court of Kansas it has been uniformly held by state courts that such a law is unconstitutional. *Underwood Typewriter Co.* v. *Pigott*, 60 W. Va. 532; *S. C.*, 55 S. E. Rep. 664; *Woessner* v. *Cottam & Co.*, 47 S. W. Rep. 678; *Lane Co.* v. *City Electric Co.*, 72 S. W. Rep. 425; *Texas Railway Co.* v. *Davis*, 54 S. W. Rep. 381; *Coweta Fertilizer Co.* v. *Brown*, 163 Fed. Rep. 162, 168; *Greek-American Sponge Co.* v. *Drug Co.*, 124 Wisconsin, 469, 476; *Haldy* v. *Tomoor-Haldy Co.*, 4 Ohio Decs. 118; *Hargraves Mills* v. *Harden*, 25 N. Y. Misc. 665; *Coit & Co.* v. *Sutton*, 102 Michigan, 324; *Gunn* v. *Sewing Mach. Co.*, 57 Arkansas, 24; *Hovey's Estate*, 198 Pa. St. 385; *Savage* v. *Atlanta Home Ins. Co.*, 66 N. Y. Supp. 1105; *S. C.*, 55 App. Div. 20.

The right to contract within a State implies necessarily the right to use the courts of the State to enforce the contract. *Von Hoffman* v. *Quincy*, 4 Wall. 535.

While a State is competent to regulate the procedure of its courts it cannot so regulate them as to discriminate against those who are engaged in interstate commerce by denying to them judicial remedies on terms of absolute equality with other litigants. A State cannot discriminate against citizens or products of other States, *Railroad* v. *Husen*, 95 U. S. 465; *Minnesota* v. *Barber*, 136 U. S. 313; *Brimmer* v. *Rebman*, 138 U. S. 78; *Voight* v. *Wright*, 141 U. S. 62; *Tiernan* v. *Rinker*, 102 U. S. 123; *Guy* v. *Baltimore*, 100 U. S. 434; *Welton* v. *Missouri*, 91 U. S. 275; *Walling* v. *Michigan*, 116 U. S. 446; nor impose a tax on interstate commerce either by a tax laid on the transportation of the subjects of that commerce, *State Freight Tax*, 15 Wall. 232, 279; *Telegraph Co.* v. *Texas*, 105 U. S. 460, 465; *People* v. *Compagnie &c. Trans-*

atlantique, 107 U. S. 59; or by a tax on the receipts derived from that transportation or upon the capital stock of the carrier, *Phila. S. S. Co.* v. *Pennsylvania*, 122 U. S. 326; *West. Un. Tel. Co.* v. *Alabama*, 132 U. S. 472; *Pensacola Tel. Co.* v. *West. Un. Tel. Co.*, 96 U. S. 1; *Ratterman* v. *West. Un. Tel. Co.*, 127 U. S. 411; *West. Un. Tel. Co.* v. *Pennsylvania*, 128 U. S. 39; *West. Un. Tel. Co.* v. *Massachusetts*, 125 U. S. 530; *Fargo* v. *Michigan*, 121 U. S. 230; *California* v. *Central Pacific*, 127 U. S. 1; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196; or by means of a license fee on the privilege or occupation of engaging in interstate commerce, *Robbins* v. *Shelby Co.*, 120 U. S. 489; *Corson* v. *Maryland*, 120 U. S. 502; *Leloup* v. *Mobile*, 127 U. S. 640; *Harman* v. *Chicago*, 147 U. S. 396; *Brennan* v. *Titusville*, 153 U. S. 289; *Moran* v. *New Orleans*, 112 U. S. 69; *Asher* v. *Texas*, 128 U. S. 129; *McCall* v. *California*, 136 U. S. 104; *N. & W. R. Co.* v. *Pennsylvania*, 136 U. S. 114; *Crutcher* v. *Kentucky*, 141 U. S. 47; *Henderson* v. *Mayor*, 92 U. S. 259; *Pickard* v. *Pullman Co.*, 117 U. S. 34; *Webber* v. *Virginia*, 103 U. S. 344; *Stoutenburgh* v. *Hennick*, 129 U. S. 141; nor can a State in any way attempt to regulate interstate commerce by imposing burdensome conditions under which it may be conducted whether by fixing rates, *Wabash Ry. Co.* v. *Illinois*, 118 U. S. 557; *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204, or preventing the introduction of certain articles of commerce, *Bowman* v. *Chicago Ry. Co.*, 125 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; or by requiring telegraphic messages to be sent in the order received and delivered by messengers within one mile of the office, *West. Un. Tel. Co.* v. *Pendleton*, 122 U. S. 347; or by requiring common carriers to give equal passenger accommodations without distinction on account of race or color. *Hall* v. *DeCuir*, 95 U. S. 485.

A State may not destroy a Federal right by a threatened denial of judicial relief in the courts of the State. *Ex parte Young*, 209 U. S. 123; *Cotting* v. *Stockyards*, 183 U. S. 79.

To the extent that this plaintiff conducts its business

through the mails, it is not important whether the subject-matter, which is transmitted from Pennsylvania to Kansas, was an article of commerce or not, or whether its mere transmission was strictly interstate commerce, for the State of Kansas was powerless to invade the exclusive power of the Federal Government to determine what should and what should not be transported through the mails. See *Ex parte Jackson*, 96 U. S. 727; *In re Rapier*, 143 U. S. 110; *Horner* v. *United States* (No. 1), 143 U. S. 207.

As to how the words in § 1260 "doing business" or "engaged in business" have been judicially construed by the courts of other States than Kansas, see *Bertha Zinc Co.* v. *Clure*, 7 Misc. Rep. (N. Y.) 23; *Washington Mills Co.* v. *Roberts*, 8 App. Div. (N. Y.) 201; *Southern Cotton Oil Co.* v. *Roberts*, 25 App. Div. (N. Y.) 13; *Soda Fount Co.* v. *Roberts*, 20 App. Div. (N. Y.) 585; *Kellogg Newspaper Co.* v. *Roberts*, 30 App. Div. (N. Y.) 150; *Ware Cattle Co.* v. *Anderson et al.*, 77 N. W. Rep. 1026; *Holder* v. *Aultman*, 169 U. S. 81; *Sullivan* v. *Sullivan Timber Co.*, 15 So. Rep. 941; *Toledo Commercial Co.* v. *Glen Mfg. Co.*, 45 N. E. Rep. 197; *Mearshon & Co.* v. *Lumber Co.*, 187 Pa. St. 12; *Wolff-Dryer Co.* v. *Bigler & Co.*, 192 Pa. St. 466; *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727; *David & Rankin Mfg. Co.* v. *Dix*, 64 Fed. Rep. 406–412; *Brewing Co.* v. *Roberts*, 22 App. Div. (N. Y.) 282; *Smith Co.* v. *Roberts*, 27 App. Div. (N. Y.) 455; *Beard* v. *Publishing Co.*, 71 Alabama, 60; *Murphy Varnish Co.* v. *Connell*, 10 Misc. Rep. (N. Y.) 553; *Harlan & Hollingsworth Co.* v. *Campbell*, 139 N. Y. 68; *Chicago Stock Yards Company* v. *Roberts*, 154 N. Y. 1; *Havens & Geddes Co.* v. *Diamond*, 93 Ill. App. 557.

These cases hold that a corporation incorporated to do a manufacturing business, and exercising all its corporate franchises in the State where it is incorporated and manufactures the article which it sells in the State where it is incorporated, although it sends agents to other States to sell its goods, does not engage in business in the other States.

It can only be stated "doing business" in other States when it opens its manufacturing establishment and manufactures its goods in another State.

There was no appearance or brief filed for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

This action was brought by the International Textbook Company in one of the courts of Kansas—the court of Topeka—to recover from Pigg, the defendant in error, the sum of $79.60 with interest as due the plaintiff under a written contract between him and that company made in 1905. The case was tried upon agreed facts and judgment was rendered in favor of the defendant for his costs. That judgment was affirmed in a state District Court, which held that the plaintiff was not entitled to maintain the action, and the latter judgment was affirmed by the Supreme Court of Kansas.

It is assigned for error that the final judgment—based upon certain provisions of the statutes of Kansas, to be presently referred to—was in violation of the company's rights under the Constitution of the United States.

The facts agreed to—using substantially the language of the parties—make substantially the following case:

The International Textbook Company is a Pennsylvania corporation, and the proprietor of what is known as the International Correspondence Schools at Scranton in that Commonwealth. Those Schools have courses in Architecture, Chemistry, Civil, Mechanical, Electrical and Steam Engineering, English Branches, French, German, Mathematics and Mechanics, Pedagogy, Plumbing, Heating, Telegraphy and many other subjects. It has a capital stock, and the profits arising from its business are distributed in dividends or applied otherwise as the company may elect. The executive officers of the company, as well as the teachers and instructors employed by it, reside and exercise their respective functions at Scranton.

Its business is conducted by preparing and publishing instruction papers, textbooks and illustrative apparatus for courses of study to be pursued by means of correspondence, and the forwarding, from time to time, of such publications and apparatus to students. In the conduct of its business the company employs local or traveling agents, called Solicitor-Collectors, whose duties are to procure and forward to the company at Scranton, from persons in a specified territory, on blanks furnished by it, applications for scholarships in its Correspondence Schools, and also to collect and forward to the company deferred payments on scholarships. In order that applicants may adopt applications to their needs each Solicitor-Collector is kept informed by correspondence with the company of the fees to be collected for the various scholarships offered and of the contract charges to be made for cash or deferred payments, as well as the terms of payment acceptable to the company. In conformity with the contract between the company and its scholars, the scholarship and instruction papers, text-books and illustrative apparatus called for under each accepted application are sent by the company from Scranton directly to the applicant and instruction is imparted by means of correspondence through the mails between the company at its office in that city and the applicant at his residence in another State.

During the period covered by the present transaction the company had a Solicitor-Collector for the territory that included Topeka, Kansas, and he solicited students to take correspondence courses in the plaintiff's schools. His office in Kansas was procured and maintained at his own expense, for the purpose of furthering the procuring of applications for scholarships and the collection of fees therefor. The company had no office of its own in that State. The Solicitor-Collector was paid a fixed salary by the company and a commission on the number of applications obtained and the collections made. He sent daily reports to the company for his territory, those reports showing that for March, 1906, the aggregate collections

on scholarships and deferred payments on subscriptions approached $500.

At the date of the agreement sued on, and at the time this suit was brought, numerous persons in Topeka were taking the plaintiff's course of instruction by correspondence through the mails. The contracts for those courses were procured by its Solicitor-Collector assigned to duty in Kansas, and, as stated, payments thereon were collected and remitted by him to the plaintiff at Scranton. .

The written contract in question, signed by the defendant at Topeka, Kansas, and accepted by the company at Scranton showed that he had subscribed for a scholarship covering a course of instruction by correspondence in Commercial Law, and had agreed to pay therefor $84, in installments. When this suit was brought there remained unpaid on the principal of that subscription the sum of $79.60.

The present action was brought to recover that sum, with interest, as due the company under the defendant's contract with it. The defendant did not deny making the contract nor that he was indebted to the company in the amount for which he was sued. But it was adjudged, in conformity with his contention, that by reason of the company's *failure to comply with certain provisions of the statutes of Kansas*, it was not entitled to maintain this action in a court *of Kansas*.

We will now refer to the provisions of the Kansas statute under which the Textbook Company was held not to be entitled to maintain the present action in the courts of the State. The statute, the plaintiff alleges, cannot be applied to it without violating its rights under the Constitution of the United States.

By § 1260 of the Kansas General Statutes of 1901 it is provided, among other things, that a corporation organized under the laws of any other State, Territory or foreign country and seeking to do business in Kansas, may make application to the State Charter Board, composed of the Attorney General, the Secretary of State and the State Bank Commissioner, for "per-

mission" to engage in business in that State as a foreign corporation. It is necessary that the application should be accompanied by a fee of $25, and as a condition precedent to obtaining authority to transact business in the State, a corporation of another State was required to file in the office of the Secretary of State its written consent, irrevocable, that process against it might be served upon that officer. § 1261. In passing upon the application the Charter Board is authorized to make special inquiry in reference to the solvency of the corporation, and if they determined that such corporation was properly organized in accordance with the laws under which it was incorporated, "that its capital is unimpaired and that it is organized for a purpose for which a domestic corporation may be organized" in Kansas, then its application is to be granted, and a certificate issued, setting forth the fact that "the application has been granted and that such foreign corporation may engage in business in this State." Before filing its charter, or a certified copy thereof, with the Secretary of State the corporation is required to pay to the State Treasurer for the benefit of the "permanent school fund" a specified per cent of its capital stock. §§ 1263, 1264. The last-named section was the subject of extended examination in *Western Union Tel. Co.* v. *Kansas*, recently decided (216 U. S. 1), and was held to be unconstitutional in its application to the Western Union Telegraph Company seeking to do local business in Kansas.

But the section which controlled the decision by the state court in the present case is § 1283, which is as follows: "It shall be the duty of the president and secretary or of the managing officer of each corporation for profit doing business in this State, except banking, insurance and railroad corporations, annually, on or before the 1st day of August, to prepare and deliver to the Secretary of State a complete detailed statement of the condition of such corporation on the 30th day of June next preceding. Such statement shall set forth and exhibit the following, namely: 1st. The authorized capital

stock. 2d. The paid-up capital stock. 3d. The par value and the market value per share of said stock. 4th. A complete and detailed statement of the assets and liabilities of the corporation. 5th. A full and complete list of the stockholders, with the post-office address of each, and the number of shares held and paid for by each. 6th. The names and post-office addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held . . . and the failure of any such corporation to file the statement in this section provided for within ninety days from the time provided for filing the same shall work the forfeiture of the charter of any corporation organized under the laws of this State, and the charter board may at any time thereafter declare the charter of such corporation forfeited, and upon the declaration of any such forfeiture it shall be the duty of the attorney-general to apply to the District Court of the proper county for the appointment of a receiver to close out the business of such corporation; and such failure to file such statement by any corporation doing business in this State and *not organized under the laws of this State shall work a forfeiture of its right or authority to do business in this State,* and the charter board may at any time declare such forfeiture, and shall forthwith publish such declaration in the official State paper. . . . No action shall be maintained or recovery had in any of the courts of this State by any corporation doing business in this State without *first* obtaining the certificate of the Secretary of State that statements provided for *in this section* (§ 1283) have been properly made." L. 1898, ch. 10, § 12, as amended by L. 1901, ch. 126, § 3.

1. In view of the nature and extent of the business of the International Textbook Company in Kansas, the first inquiry is whether the statutory prohibition against the maintaining of an action in a Kansas court by "any corporation *doing business in this* [that] *State*" embraces the plaintiff corporation. It must be held, as the state court held, that it does; for,

it is conceded that the Textbook Company did not, before bringing this suit, make, deliver and file with the Secretary of State either the statement or certificate required by § 1283; and upon any reasonable interpretation of the statute that company, both at the date of the contract sued on, and when this action was brought, must be held as "*doing business*" in Kansas. It had an agent in the State who was employed to secure scholars for the schools conducted by correspondence from Scranton, and to receive and forward any money obtained from such scholars. Its transactions in Kansas, by means of which it secured applications from numerous persons for scholarships, were not single or casual transactions, such as might be deemed incidental to its general business as a foreign corporation, but were parts of its regular business continuously conducted in many States for the benefit of its Correspondence Schools. While the Supreme Court of Kansas has distinctly held that the statute did not embrace single transactions that were only incidentally necessary to the business of a foreign corporation, it also adjudged that the business done by the Textbook Company in Kansas was not of that kind, but indicated a purpose to regularly transact its business from time to time in Kansas, and therefore it was to be regarded as doing business in that State within the meaning of the statute; and that it "was the intention of the legislature that the State should reach every continuous exercise of a foreign franchise," and that it should apply even where the business of the foreign corporation was "purely interstate commerce." *Deere* v. *Wyland*, 69 Kansas, 255, 257, 258; *State* v. *Book Co.*, 65 Kansas, 847; *Commission Co.* v. *Haston*, 68 Kansas, 749. In our judgment, those rulings as to the scope of the statute were correct. They were in substantial harmony with the construction placed by this court upon a Colorado statute somewhat similar to the Kansas act. A statute passed in execution of a provision in the Colorado constitution required foreign corporations as a condition of their authority "to do business" in that State, to make and file with the Secretary of

State a certificate covering certain specified matters. An Ohio corporation having made in Colorado a contract for the sale of machinery to be sent to it from the latter State to Ohio and the vendor having failed to perform the contract, a suit was brought against him in the Federal court, sitting in Colorado. One of the defenses was the failure of the Ohio, corporation to make and file with the Secretary of State the certificate required by the Colorado statute before it should be "authorized or permitted to do any business" in Colorado. It became necessary to inquire whether the Ohio corporation, by reason of the above isolated contract, did business in Colorado within the meaning of the constitution and laws of the latter State. This court said: "Reasonably construed, the constitution and statute of Colorado forbid, not the doing of a single act of business in the State, but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by the statute. . . . The making in Colorado of the *one* contract sued on in this case, by which one party agreed to build and deliver in Ohio certain machinery and the other party to pay for it, did not constitute a carrying on of business in Colorado. . . . To require such a certificate as a prerequisite to the doing of *a single act of business* when there was no purpose to do any other business or have a place of business in the State, would be unreasonable and incongruous." *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727, 728, 734.

In view of the agreed facts and the principles announced both by the Kansas Supreme Court and by this court we hold that, within the meaning of § 1283 of the Kansas statute, the International Textbook Company was doing business in the latter State at the time the contract in question was made, and was therefore within the terms of that section.

2. But this view as to the meaning of the Kansas statute does not necessarily lead to an affirmance of the judgment below if, as the plaintiff contends, the business in which it is regularly engaged is interstate in its nature, and if the statute,

by its necessary operation, materially or directly burdens that business.

It is true that the business in which the International Textbook Company is engaged is of a somewhat exceptional character, but, in our judgment, it was, in its essential characteristics, commerce among the States within the meaning of the Constitution of the United States. It involved, as already suggested, regular and, practically, continuous intercourse between the Textbook Company, located in Pennsylvania, and its scholars and agents in Kansas and other States. That intercourse was conducted by means of correspondence through the mails with such agents and scholars. While this mode of imparting and acquiring an education may not be such as is commonly adopted in this country, it is a lawful mode to accomplish the valuable purpose the parties have in view. More than that; this mode—looking at the contracts between the Textbook Company and its scholars—involved the transportation from the State where the school is located to the State in which the scholar resides, of books, apparatus and papers, useful or necessary in the particular course of study the scholar is pursuing and in respect of which he is entitled, from time to time, by virtue of his contract, to information and direction. Intercourse of that kind, between parties in different States—particularly when it is in execution of a valid contract between them—is as much intercourse, in the constitutional sense, as intercourse by means of the telegraph—"a new species of commerce," to use the words of this court in *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9. In the great case of *Gibbons* v. *Ogden*, 9 Wheat. 1, 189, this court, speaking by Chief Justice Marshall, said, "Commerce, undoubtedly, is traffic, but it is something more; it is *intercourse*." Referring to the constitutional power of Congress to regulate commerce among the States and with foreign countries, this court said in the *Pensacola case*, just cited, that "it is not only the right but the duty of Congress to see to it that *intercourse* among the States and *the transmission*

of intelligence are not obstructed or unnecessarily encumbered by state legislation." This principle has never been modified by any subsequent decision of this court.

The same thought was expressed in *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347, 356, where the court said: "Other commerce deals only with persons, or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only *ideas, wishes, orders,* and *intelligence.*" It was said in the Circuit Court of Appeals for the Eighth Circuit, speaking by Judge Sanborn, in *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. Rep. 1, 17, that "all interstate commerce is not sales of goods. Importation into one State from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different States, which contemplates and causes such importation, whether it be of goods, persons, *or information,* is a transaction of interstate commerce." If intercourse between persons in different States by means of telegraphic messages conveying intelligence or information is commerce among the States, which no State may directly burden or unnecessarily encumber, we cannot doubt that intercourse or communication between persons in different States, by means of correspondence through the mails, is commerce among the States within the meaning of the Constitution, especially where, as here, such intercourse and communication really relates to matters of regular, continuous business and to the making of contracts and the transportation of books, papers, etc., appertaining to such business. In our further consideration of this case we shall therefore assume that the business of the Textbook Company, by means of correspondence through the mails and otherwise between Kansas and Pennsylvania, was interstate in its nature.

3. We must next inquire whether the statute of Kansas, if applied to the International Textbook Company, would directly burden its right by means of correspondence through the mails and by its agents, to secure written agreements with

persons in other States, whereby such persons, for a valuable consideration, contract to pay a given amount for scholarships in its Correspondence Schools, and to have sent to them, as found necessary, from time to time, books, papers, apparatus and information, needed in the prosecution, in their respective States, of the particular study which the scholar has elected to pursue under the guidance of those who conduct such schools at Scranton? Let us see what effect the statute by its necessary operation must have on the conduct of the company's business.

In the first place, it is made a condition precedent to the authority of a corporation of another State, except banking, insurance and railroad corporations, to do business in Kansas, that it shall prepare, deliver *and file with the Secretary of State* a detailed "Statement," showing the amount of the authorized, paid-up, par and market value of, its capital stock, its assets and liabilities, a list of its stockholders, with their respective post-office addresses and the shares held and paid for by each, and the names and post-office addresses of the officers, trustees, or directors and managers.

In the next place, the statute denies to the corporation doing business in Kansas the right to maintain an action in a Kansas court, *unless it shall first obtain* a certificate of the Secretary of State to the effect that the Statement, required by § 1283, *has been properly made.*

Was it competent for the State to prescribe, as a condition of the right of the Textbook Company to do interstate business in Kansas, such as was transacted with Pigg, that it should prepare, deliver, and file with the Secretary of State the Statement mentioned in § 1283? The above question must be answered in the negative upon the authority of former adjudications by this court. A case in point is *Crutcher* v. *Kentucky*, 141 U. S. 47, 56, 57, often referred to and never qualified by any subsequent decision. That case arose under a statute of Kentucky regulating agencies of foreign express companies. The statute required as a condition of the right

of the agent of an express company, not incorporated by the laws of Kentucky, to do business in that Commonwealth, to take out a license from the State Auditor, and to make and file in the Auditor's office a statement showing that the company had an actual capital of a given amount, either in cash or in safe investments, exclusive of costs. These requirements were held by this court to be in violation of the Constitution of the United States in their application to foreign corporations engaged in interstate commerce. The court said: "If the subject was one which appertained to the jurisdiction of the State legislature, it may be that the requirements and conditions of doing business within the State would be promotive of the public good. It is clear, however, that it would be a regulation of interstate commerce in its application to corporations or associations engaged in that business; and that is a subject which belongs to the jurisdiction of the National and not the State legislature. Congress would undoubtedly have the right to exact from associations of that kind any guarantees it might deem necessary for the public security, and for the faithful transaction of business; and as it is within the province of Congress, it is to be presumed that Congress has done, or will do, all that is necessary and proper in that regard. Besides, it is not to be presumed that the State of its origin has neglected to require from any such corporation proper guarantees as to capital and other securities necessary for the public safety. If a partnership firm of individuals should undertake to carry on the business of interstate commerce between Kentucky and other States, it would not be within the province of the State legislature *to exact conditions on which they should carry on their business, nor to require them to take out a license therefor.* To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business,

cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject." Again, in the same case: "Would any one pretend that a State legislature could prohibit a foreign corporation—an English or a French transportation company, for example—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some State officer, *and filing a sworn statement as to the amount of its capital stock paid in?* And why not? Evidently *because the matter is not within the province of State legislation*, but within that of national legislation." Further, in the same case: "We do not think that the difficulty is at all obviated by the fact that the express company, as incidental to its main business, (which is to carry goods between different States,) does also some local business by carrying goods from one point to another within the State of Kentucky. This is, probably, quite as much for the accommodation of the people of that State as for the advantage of the company. But whether so or not, it does not obviate the objection that the regulations as to license *and capital stock* are imposed *as conditions on the company's carrying on the business of interstate* commerce, which was manifestly the principal object of its organization. *These regulations are clearly a burden and a restriction upon that commerce.* Whether intended as such or not, they operate as such. But taxes or license fees in good faith imposed exclusively on express business carried on wholly within the State would be open to no such objection." To the same general effect are many other cases. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489; *Leloup* v. *Mobile*, 127 U. S. 640; *Stoutenburgh* v. *Hennick*, 129 U. S. 141; *Lyng* v. *Michigan*, 135 U. S. 166; *McCall* v. *California*, 136 U. S. 104; *Norfolk & Western Railroad Co.* v. *Pennsylvania*, 136 U. S. 114; *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1. It is true that the statute does not, in terms, require the corporation of another State engaged in interstate commerce to take

out what is technically "a license" to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a "Statement" of the kind mentioned in § 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business. In either case it imposes a *condition* upon a corporation of another State seeking to do business in Kansas, which, in the case of interstate business, is a regulation of interstate commerce and directly burdens such commerce. The State cannot thus burden interstate commerce. It follows that the particular clause of § 1283 requiring that "Statement" is illegal and void.

In this connection it is to be observed that by the statute the doors of Kansas courts are closed against the Textbook Company, unless it *first* obtains from the Secretary of State a certificate showing that the "Statement" mentioned in § 1283 has been properly made. In other words, although the Textbook Company may have a valid contract with a citizen of Kansas, one directly arising out of and connected with its interstate business, the statute denies its right to invoke the authority of a Kansas court to enforce its provisions unless it does what we hold it was not, under the Constitution, bound to do, namely, make, deliver and file with the Secretary of State the Statement required by § 1283. If the State could, under any circumstances, legally forbid its courts from taking jurisdiction of a suit brought by a corporation of another State, engaged in interstate business, upon a valid contract arising out of such business and made with it by a citizen of Kansas, it could not impose on the company, as *a condition of its authority to carry on its interstate business in Kansas*, that it shall make, deliver and file that Statement with the Secretary of State and obtain his certificate that it had been properly made. This court held in *Chambers* v. *Baltimore & Ohio Railroad Co.*, 207 U. S. 142, 148, that a State may, subject to the restrictions of the Federal Constitution, "determine the limits of the jurisdiction of its courts, and the character of the

controversies which shall be heard in them." But it also said in the same case: "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution." How far a corporation of one State is entitled to claim in another State, where it is doing business, equality of treatment with individual citizens in respect of the right to sue and defend in the courts is a question which the exigencies of this case do not require to be definitely decided. It is sufficient to say that the requirement of the Statement mentioned in § 1283 of the statute imposes a direct burden on the plaintiff's right to engage in interstate business, and, therefore, is in violation of its constitutional rights. It is the established doctrine of this court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business. But such a burden is imposed when the corporation of another State, lawfully engaged in interstate commerce, is required, as a condition of its right to prosecute its business in Kansas, to make and file a Statement setting forth certain facts which the State, confessedly, could not control by legislation. It results that the provision as to the Statement mentioned in § 1283 must fall before the Constitution of the United States, and with it—according to the established rules of statutory construction—must fall that part of *the same section* which provides that the obtaining of the certificate of the Secretary of State that such Statement has been properly made shall be a condition precedent to the right of the plaintiff to maintain an action in the courts of Kansas. Section 1283, looking at the object for which it was enacted, must be regarded as an entirety. These

parts of the statute are so connected with and dependent upon each other that the clause relating to actions brought in the courts of Kansas cannot be separated from the prior clause in the *same section* referring to the Statement to be filed with the Secretary of State, and the former left in force after the latter is stricken down as invalid. As the clause about suits in the courts of Kansas *expressly refers* to the prior clauses *in the same section* prescribing the Statement to be filed with the Secretary of State, the clause relating to suits would be meaningless without reference to the latter. We cannot suppose, from the words of the statute, that the legislature would have adopted the regulation about actions in the state courts, except for the purpose of enforcing the prior clause in the same section relating to the Statement to be filed with the Secretary of State. The several parts of the section are not capable of separation if effect be given to the legislative intent. It is well settled that if a statute is in part unconstitutional the whole statute must be deemed invalid, if the parts not held to be invalid are so connected with the general scope of the statute that they cannot be separately enforced, or, if so enforced, will not effectuate the manifest intent of the legislature. In *Allen* v. *Louisiana*, 103 U. S. 80, 84, this court referred with approval to what Chief Justice Shaw said on this point in *Warren* v. *Mayor &c.*, 2 Gray, 84. Referring to the rule obtaining in cases of statutes in part constitutional and in part unconstitutional, that eminent jurist said: "But, if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them." See also *Poindexter* v. *Greenhow*, 114 U. S. 270; *Spraigue* v. *Thompson*, 118 U. S. 90; *Huntington* v. *Worthen*, 120 U. S. 97.

It results that as the part of § 1283, which relates to the Statement to be filed with the Secretary is unconstitutional, and as the clause in the same section, relating to suits in the state court, is so dependent upon and connected with that part as to be meaningless when standing alone, the section must be held inoperative in all its parts and as not being in the way of the enforcement in any state court of competent jurisdiction of the plaintiff's right to a judgment against the defendant for the amount conceded to be due from him to the Textbook Company under his contract. The judgment must be reversed and the case remanded for further proceedings not inconsistent with this opinion.

MR JUSTICE MOODY heard the argument of this case, participated in its decision in conference, and approves the reversal of the judgment upon the grounds stated in this opinion.

Reversed.

THE CHIEF JUSTICE and MR. JUSTICE MCKENNA dissent.